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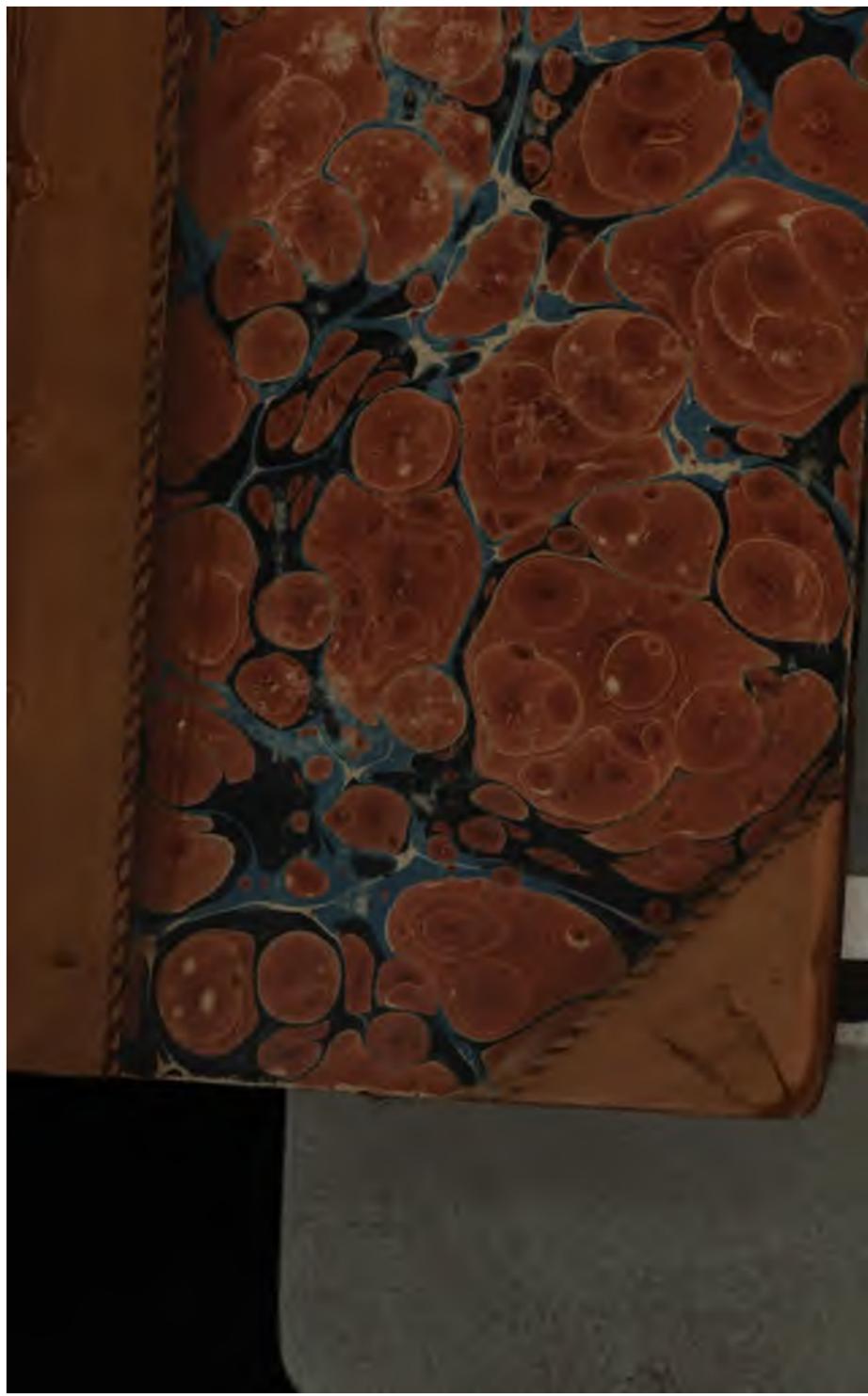
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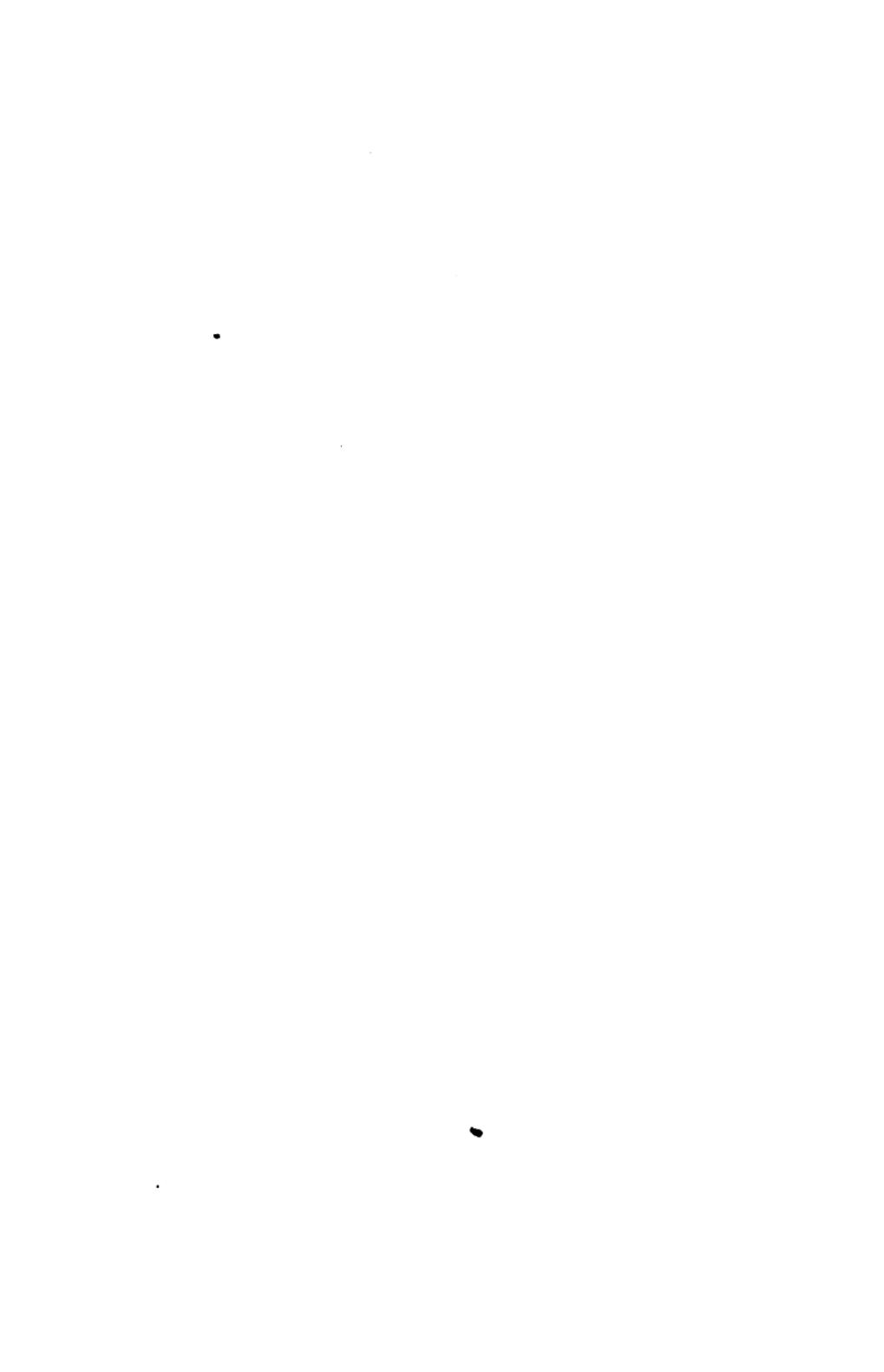
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THE ACT  
FOR  
THE ABOLITION OF ARREST  
ON  
*Mesne Process in Civil Actions,*  
AND ALSO  
THE ACTS RELATING TO OR AMENDING THE SAME,  
TOGETHER WITH THE  
RULES, ORDERS, AND CASES,  
AS  
PROMULGATED AND DECIDED IN ALL THE COURTS,  
WITH  
*An Appendix of Forms.*  
—  
BY  
EDWARD INGS, ESQ.,  
OF THE INNER TEMPLE, BARRISTER AT LAW.



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## P R E F A C E.

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THE Author, in submitting this little work to the notice of the Members of the Profession, whom, it is earnestly trusted, will, with their accustomed indulgence, look favourably and encouragingly upon the present undertaking, has done so with the sole intention of assisting the practitioner in his reference to the cases deciding the practice and operation of the Act abolishing Arrest on Mesne Process. With the intention of rendering the book more useful, several practical forms, together with those of the new writs of execution recently promulgated by the Judges in pursuance of the power vested in them by the twentieth section of the above Act, and adapted to the different courts, have been appended. The cases have been so selected, that they are introduced as they apply to the various sections of the Act; and as many others have been published since much of the work went to press, they have been arranged in an Addenda, for the purpose of rendering it complete to the present time.

E. I.

2, *Verulam Buildings, Gray's Inn,*  
*12th May, 1840.*



## ADDENDA.

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*Page 2, note (e).*—To the case of *Turnor v. Darnell*, in this note, add that of *Grovcock v. Waller*, 8 Dowl. P. C. 146, S. P.

*Page 4, note (j).*—Add to this note the case of *Edwards v. Robertson*, 7 Dowl. P. C. 837; 5 Mee. & Wels. 520, S.C.

*Page 5, note (n).*—The defendant having been arrested under a writ of capias, in pursuance of a judge's order, paid money into the hands of the proper officer, in lieu of bail to the sheriff. He subsequently put in special bail, to whom the plaintiff excepted, and the defendant then rendered:—*held*, that the putting in the bail, and the render of the defendant, was equivalent to an appearance, for the purpose of an application to pay the money out of court to the defendant. *Brooke v. Gunning*, 8 Dowl. P. C. 11.

*Page 6, note (o).*—Where a defendant has obtained judgment, as in case of a nonsuit, a rule to pay to him money deposited in lieu of bail, is absolute in the first instance. *White v. Urwin*, 8 Dowl. P. C. 202.

*Page 7, note (p).*—Where sufficient has been shown to indicate that the defendant has an intention of quitting England, the court will not discharge him, even although he swears he never contemplated leaving England, and most positively not for the place alleged in the affidavit on which he was held to bail. *Duncan v. Jacob*, 3 Jurist, 1149.

*Page 10, note (t).*—Add to this note the case of *Boddington v. Woodley*, 8 Adol. & Ell. 925, S.P.

*Page 13, note (c).*—The firm of A. & Co. being indebted to their bankers in a considerable balance, and disputes having arisen amongst the partners, an agreement was entered into, stipulating that A. should retire from the firm, and that the remaining partners should take upon themselves the partnership liabilities, and release A. from the partnership debt due to the bankers, who confirmed the agreement. The bankers, upon A.'s filing his bill for a specific performance of this agreement, commenced proceedings under this section, to make A. and his late co-partners bankrupts, in respect of the debt comprised in the agreement:—*held*, that the Master of the Rolls had power to restrain the bankers suing out a fiat in bankruptcy, in respect of the debt set forth in the agreement. *Attwood v. Banks*, 4 Jurist, 100.

*Page 15, note (e).*—This statute, sec. 9., requiring the presence of an attorney on behalf of a defendant executing a cognovit, or warrant of attorney, does not apply where the defendant is himself an attorney. The provision in the statute is for the benefit of the defendant only; and therefore a third party, who may be prejudiced by a judgment against his debtor, cannot object that no attorney attested the execution of the warrant of attorney on which such judgment is founded. *Chipp v. Harris*, 5 Mee. & Wels. 430.

*Page 15, note (f).*—Add to this note the case of *Barnes v. Pendrey*, 7 Dowl. P. C. 747, S. C.

The attorney who subscribed the execution of a warrant of attorney for the defendant, was the attorney of the plaintiff:—held, that although the defendant was fully aware of the nature of the instrument, yet as the attorney was not wholly uninterested, this was not sufficient attestation within the terms of the statute. *Devon v. Thring*, 3 Jurist, 1193.

Where three defendants go to a particular attorney, named by the plaintiff, and give him instructions to prepare a joint warrant of attorney, and each of the defendants freely recognises the attorney as acting for him, the warrant of attorney is good. *Haigh v. Frost and others*, 7 Dowl. P. C. 743.

A warrant of attorney, attested according to the provisions of this section, is not vitiated by the circumstance of the attorney who has attested it on the part of the person executing the instrument, having been suggested or recommended to him by the attorney employed on the other side. *Taylor v. Nicholls*, 4 Jurist, 271.

A party who has executed a warrant of attorney, on which a judgment has been entered and execution issued, is not precluded by his subsequent bankruptcy from applying to set aside that instrument, on the ground of the formalities required by this section not having been complied with. *Ibid.*

*Page 15, note (g).*—In order to make a cognovit valid, its execution must be attested by an attorney attending on behalf of the defendant, other than the attorney or his agent acting for the plaintiff. *Mason v. Kiddle*, 5 Mee. & Wels. 513; S. C. nom. *Mason v. Riddle*, 8 Dowl. P. C. 207.

*Page 16, note (h).*—If an attorney, properly appointed by a defendant, on his behalf, neglects his duty to his client, and (if without collusion with the plaintiff) neglects to inform his client of the nature and effect of the warrant of attorney, it is not an objection available to the defendant. *Haigh v. Frost and others*, 7 Dowl. P. C. 743; 3 Jurist, 1125, S.C.

*Page 16, note (i).*—An attestation to a cognovit in these words, “Witness, George Edwards, defendant's attorney, named by him and attending at his request,” is not sufficient; it should further state that he subscribes as such attorney, for, *semble*, equivalent words are not sufficient, but those of the statute must be strictly preserved. *Poole v. Hobbs*, 8 Dowl. P. C. 113; 3 Jurist, 1151, S. C.

*Page 18, note (j).*—Property held by way of lien, cannot be taken in execution under a fieri facias, either at common law, or by the provisions of this statute. *Legg v. Evans and another*, 8 Dowl. P. C. 177; 4 Jurist, 197, S. C.

*Page 25, note (n).*—Add to this note the case of *Wallis v. Sheffield*, 7 Dowl. P. C. 793, S. C.

*Page 39, note (u).*—Add to this note the case of *Hamlin v. Crossley*, 8 Adol. & Ell. 677, S. P.

A defendant having been outlawed in a cause after judgment, and having been discharged from the debt by the Insolvent Debtors Court, while in custody under the outlawry, the Court of Common Pleas refused to charge him in custody on the judgment in outlawry. The effect of such a discharge by the Insolvent Court is to relieve the defendant, not only from the judgment in the action, but from the outlawry also. *Adcock v. Fiske*, 6 Bingh. N. C. 17; S. C. nom. *Abthorpe v. Fiske*, 8 Dowl. P. C. 66.

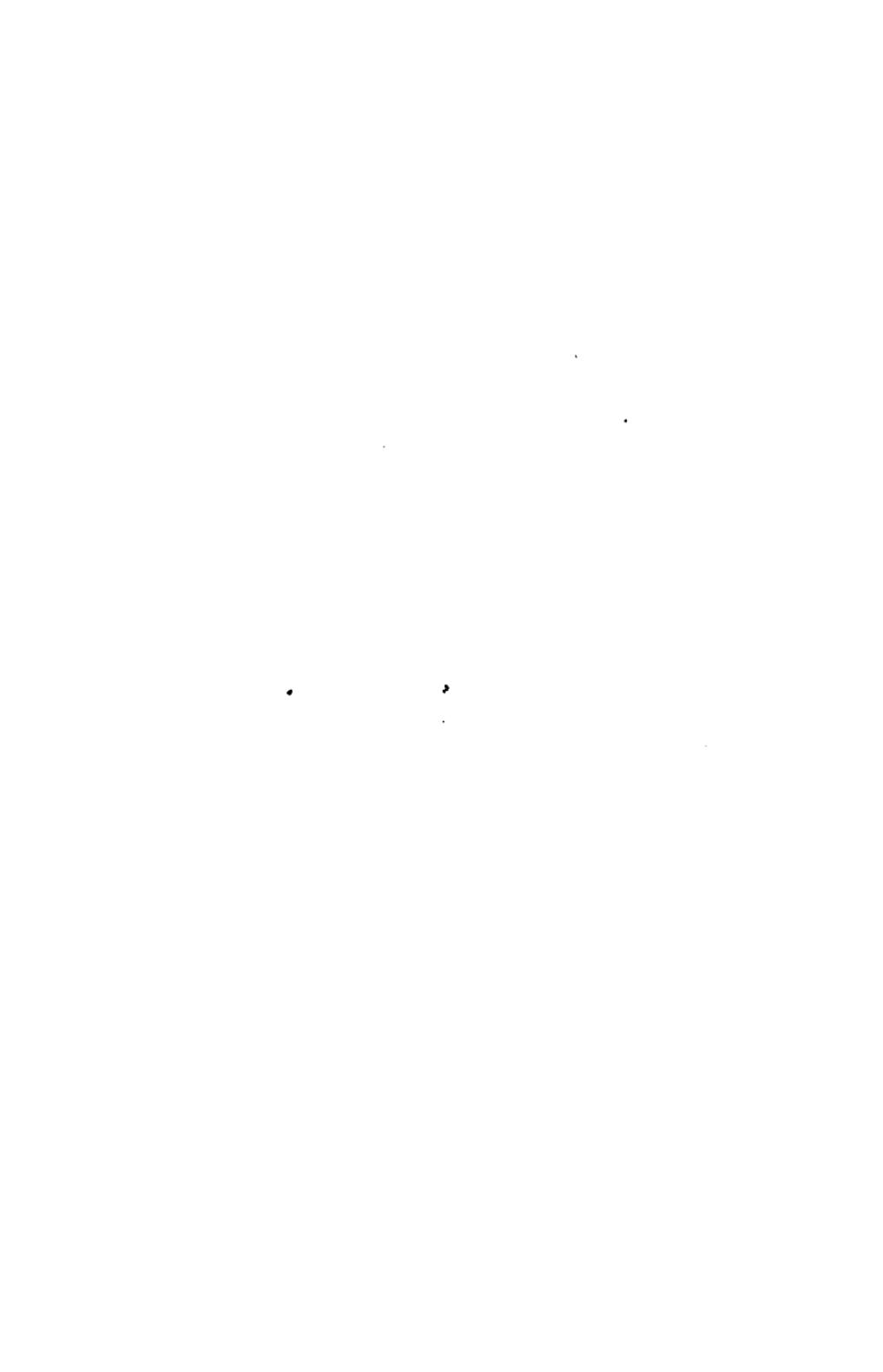
*Page 52, note (j).*—Add to this note the case of *Chew v. Lye*, 5 Mee. & Wels. 388, S. C.

*Page 66, note (t).*—B., being in insolvent circumstances, and having several executions in his house, to satisfy which all his goods must have been sold, at the suggestion of one of the creditors, assigned to him all his effects, in trust for the general benefit of his creditors who should come in and sign the deed. The deed recited that B. "had proposed" to execute such assignment. The assignee paid the sheriff's officer the amount of the executions, and he withdrew from possession; several of the execution creditors signed the deed. Within three months after the assignment, B. went to prison, and subsequently was discharged under the Insolvent Act:—held, that the assignment was not voluntary, within the meaning of the 7 Geo. 4, c. 57, s. 32. *Knight and another, assignees of Barrow v. Fergusson*, 5 Mee. & Wels. 389; see also note (q), p. 65.

*Page 92, note (A).*—Add to this note the case of *Hamlin v. Crossley*, 8 Adol. & Ell. 677, S. P.

*Page 97, note (o).*—Add to this note the case of *Growcock v. Waller*, 8 Dowl. P. C. 146, S. P.

*Page 103, note (t).*—Where an insolvent debtor was remanded for six months, at the suit of his detaining creditor, and during his imprisonment the attorney agreed with him that he should be discharged on giving him a bill of exchange for a part of the detaining creditor's debt, and an I.O.U. for the attorney's bill of costs in the action, which he gave, and was liberated accordingly:—held, that the insolvent could not be sued on either of these securities. *Ashley v. Killick*, 5 Mee. & Wels. 509; 4 Jurist, 222, S. C.



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# THE ACT

FOR THE

## Abolition of Arrest on Mesne Process,

&c. &c.



1 & 2 VICT., CAP. 110.

*An Act for abolishing Arrest on Mesne Process in Civil Actions, except in certain Cases; for extending the Remedies of Creditors against the Property of Debtors; and for amending the Laws for the Relief of Insolvent Debtors in England. [16th August, 1838.]*

### ARREST ABOLISHED, EXCEPT IN CERTAIN CASES.

WHEREAS the present power of arrest upon mesne process is unnecessarily extensive and severe, and ought to be relaxed: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that Arrest on from and after the time appointed for the com- mesne pro- mencement of this act, no person shall be arrested cess abo- upon mesne process (*a*) in any civil action in any lished, ex- cept in cer-

(*a*) Where a defendant was arrested on mesne process before the passing of this act, but had escaped from custody, and was, after the act came into operation, retaken under an escape warrant, the Court of Exchequer held, that such arrest was not within the provisions of this section, as having been made on *mesne process* after this act came into operation, and that he was not entitled to his discharge. *Nyas v. Milton*, 4 Mee. & Wels. 359; 7 Dowl. P. C. 90; 1 Horn. & Harls. 357, S. C.

*Process in Personal Actions.—Arrest.*

tain cases. inferior court (*b*) whatsoever, or (except in the cases and in the manner hereinafter provided for) (*c*) in any superior court (*d*).

**PROCESS IN PERSONAL ACTIONS.**

How actions to be commenced.

**II.** And be it enacted, that all personal actions in her Majesty's superior courts of law at Westminster shall be commenced by writ of summons (*e*).

**POWER OF ARREST.**

A judge of a superior court may order defendant to

**III.** And be it enacted, that if a plaintiff in any action in any of her Majesty's superior courts of law at Westminster, in which the defendant is now liable to arrest, whether upon the order of a judge,

(*b*) The Court of Common Pleas at Durham is not an inferior court. *Per Littledale, J.*, in *Curl v. Elliot*, 2 Jurist, 1090.

(*c*) The enactment in this section, that no person shall be arrested on mesne process, except in the cases and in the manner provided for, includes two cases, namely, that of a party about to leave the country, which is provided for by the third section, and that of a party seeking to detain an insolvent under the 85th section. *Per Parke, B.*, *Turnor v. Darnell*, 7 Dowl. P. C. 347; 5 Mee. & Wels. 28, S. C.

(*d*) This section does not apply to insolvent debtors to be discharged at some future period. *Turnor v. Darnell*, 7 Dowl. P. C. 346; 5 Mee. & Wels. 28, S. C. This section is to be construed according to the ordinary import of the words, and means that no one shall be *held to bail*; not that no one shall be in a *state of arrest*, or imprisonment, after the commencement of the act. *Per Parke, B.*, *Harrison v. Dickenson*, 4 Mee. & Wels. 358; *Schwabacher v. Fleming*, 8 Law Jour. Rep. (N. S.) 21.

(*e*) Where an application is made for a judge's order for a *capias*, it is the universal practice to require an affidavit of a writ of summons having been issued. *Per Alderson, B.*, *Turnor v. Darnell*, 7 Dowl. P. C. 348; but see *contrà*, *Holborn v. Tucker*, Sept. 1839, *cor. Maule, B.*, at chambers; *Hollingsworth v. Robertson*, Nov. 1839, *cor. Littledale, J.*, at chambers; 1 Chit. Arch. Prac. 7th ed. 485.

A writ of *capias* or *detainer* may be obtained against an insolvent debtor, adjudged to be discharged at some future period, under the provisions of sec. 85, without a writ of summons having been previously issued. *Turnor v. Darnell*, 7 Dowl. P. C. 346; 5 Mee. & Wels. 28, S. C.

An action having been commenced by *capias*, the Court re-

### Capias.

or without such order, shall, by the affidavit (*f*) be arrested of himself or of some other person, show, to the satisfaction of a judge of one of the said superior courts, that such plaintiff has a cause of action (*g*) against the defendant or defendants to the amount of twenty pounds or upwards, or has sustained damage to that amount, and that there is probable cause for believing that the defendant, or any one or more of the defendants, is or are about to quit England unless he or they be forthwith apprehended (*h*), it shall be lawful for such judge, by a

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fused to give directions that it might be continued by summons, for, *per Tindal, C. J.*, "The Court cannot advise one side what course to take." *Fitzjames v. Lush*, 1 Arnold, 385.

(*f*) See forms, Nos. 1 and 2, Appendix.

(*g*) An affidavit of debt by the indorsee against the drawer of a bill of exchange, which does not aver presentment and default by the acceptor, is insufficient to support a judge's order. *Hopkinson v. Salembier*, 7 Dowl. P. C. 493; 5 Mee. & Wels. 423, *S. C.*; and see also on the same point, *Simpson v. Dick*, 3 Dowl. P. C. 731; but see *contrà, Witham v. Gompertz*, 4 Dowl. P. C. 382; 2 C. M. & R. 736; 1 Gale, 301; 1 Tyr. & G. 6, *S. C.*; *Phillips v. Turnor*, 3 Dowl. P. C. 163; 5 Tyr. 196; 1 C. M. & R. 597, *S. C.*.

(*h*) This section, which enables a judge to order the arrest of a party, applies to every case of absence from England, which will delay the plaintiff in obtaining execution in the ordinary course. *Larchin v. Willan*, 7 Dowl. P. C. 11; 4 Mee. & Wels. 351; 1 Horn. & Hurl. 332, *S. C.*; *semble*, this section would not be applicable to the case of a captain of a packet plying on a short journey, as for instance, from Dover to Calais. *Ibid.* 7 Dowl. P. C. 13; 1 Horn. & Hurl. 332, *S. C.*

Where it is sought to arrest or detain a defendant, the affidavit on which the application is made, must not only state the belief of the deponent, that the defendant is "about to quit England, unless he be forthwith apprehended," but must also set forth the circumstances upon which such belief is founded. *Bateman v. Dunn*, 7 Dowl. P. C. 105; 5 Bing. N. C. 49; 1 Arnold, 374, *S. C.*

Under this section, the power to arrest or detain is expressly given to a single judge and not to the court; but before any order is made in exercise of such power, it must be shown

*Capias.—Arrest.—Bail.*

special order (*i*), to direct that such defendant or defendants so about to quit England shall be held to bail for such sum as such judge shall think fit, not exceeding the amount of the debt or damages : and thereupon it shall be lawful for such plaintiff, within the time which shall be expressed in such order, but not afterwards, to sue out one or more writ or writs of capias (*j*) into one or more different counties, as the case may require, against any such defendant so directed to be held to bail, which writ of capias shall be in the form contained in the schedule to this act annexed (*k*), and shall bear date on the day on which the same shall be issued : provided always, that the said writ of capias and all writs of execution to be issued out of the superior courts of law at Westminster into the counties palatine of Lancaster and Durham, shall be directed to the chancellor of the county palatine of Lancaster, or his deputy there, or to the chancellor of the county palatine of Durham, or his deputy there.

**ARREST.—BAIL.**

Sheriff may proceed to arrest defendant. IV. And be it enacted, that the sheriff or other officer to whom any such writ of capias shall be directed, shall, within one calendar month after the date thereof, including the day of such date, but not afterwards, proceed to arrest the defendant

that there is reasonable ground to believe that the party sought to be arrested is about to quit England to avoid the plaintiff's suit. *Harvey v. O'Meara*, 7 Dowl. P. C. 725 ; 3 Jurist, 629, S. C.

(*i*) The order of a judge is not required to arrest or detain an insolvent debtor adjudged to be discharged at some future period, as provided for by sec. 85. *Turnor v. Darnell*, 7 Dowl. P. C. 347 ; 5 Mee. & Wels. 28, S. C.

(*j*) The Court cannot compel the keeper of a gaol to accept a capias, issued in order that it might operate as a detainer against a party already in custody, but about to obtain his discharge. *Edwards v. Robertson*, 3 Jurist, 1106.

(*k*) See form, No. 3, Appendix.

hereupon (*i*) ; and such defendant when so arrested Defendant shall remain in custody until he shall have given a to remain bail-bond to the sheriff, or shall have made de- in custody osit of the sum endorsed on such writ of capias, finds bail, together with ten pounds for costs, according to the or makes a resent practice of the said superior courts (*n*) ; and deposit.

In subsequent proceedings as to the putting in and effecting special bail, or of making deposit and payment of money into court instead of putting in and perfecting special bail, shall be according to the like practice of the said superior courts, or as far thereto as the circumstances of the case will admit (*o*).

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(*i*) See *Edwards v. Robertson*, note (*j*), ante, p. 4.

(*n*) As the proceedings on the part of a sheriff after the arrest of a defendant on a capias are not in any respects altered by the above enactment, a sheriff must therefore now as heretofore keep a party in custody when arrested until he as either given bail to the sheriff, or put in bail to the action, so that the following case will be still applicable. Where a party having been arrested on a capias continued in the custody of the sheriff, not having given him bail, or put in bail above at the required time, but after the expiration of the time for putting in special bail, went in charge of a sheriff's officer to the court of a revising barrister ; it was held by the Court of Exchequer, that the sheriff had been guilty of an escape. *Williams v. Mostyn*, 7 Dowl. P. C. 38.

Where the sheriff takes a bail-bond with only one security, the Court will not set aside an attachment against him on an application at his instance. *Reg. v. the Sheriff of Middlesex v. Lane v. Griffiths*, 7 Dowl. P. C. 313 ; and see *Rex v. Sheriff of London, in Lazarus v. Tanner*, 9 Moore, 422 ; 2 Bing. 227, S. C.

Money having been deposited in lieu of bail to the sheriff, and an order subsequently obtained for better particulars of the plaintiff's demand, with a stay of proceedings, having remained unobeyed for a year, a rule for the defendant to take the money out of Court was refused. *Harden v. Harbourn*, 7 Dowl. P. C. 546.

(*o*) As the method of proceeding to enforce the responsibility of bail to the action is not in the least respect altered by this enactment, the author has deemed it on that account most advisable to set out the several cases relative to the proceedings to fix the bail, which have been decided since the commencement of this act. On the 24th October, a writ of

**WHEN ORDER TO BE MADE.**

Order may  
be made at  
any stage

V. And be it enacted, that any such special order may be made and the defendant arrested in

*caecus ad satisfaciendum* was lodged at the sheriff's office, and on the 3rd November, proceedings were commenced against the bail; the Court of Exchequer held, that a motion made on the 13th of November to set aside the *ca. sa.*, and subsequent proceedings for irregularity, was too late. *Pocock and another v. Cockerton*, 7 Dowl. P. C. 21; *Pocock v. Percy*, *ibid.*; 1 Horn. & Hurl. 334, S. C.

Where the bail make an application to set aside the proceedings in the action against their principal, and also in that against themselves, the affidavits may be entitled in both actions. *Pocock and another v. Cockerton*, 7 Dowl. P. C. 21; *Pocock v. Percy*, *ibid.*; 1 Horn. & Hurl. 334, S. C.

Where bail justify for property sufficient in amount, though not properly described in the affidavit of justification, the plaintiff is not entitled to the costs of opposition, but is excused from paying them, and they are to be considered as costs in the cause. *Brown v. Ahrenfeldt*, 7 Dowl. P. C. 46; see *contra*, *Hemming v. Blake*, 1 Dowl. P. C. 179.

The 1st, 2nd, 3rd, and 4th rules of Trinity Term, 1 W. 4, apply only to bail put in in the ordinary course, and not to bail put in by the sheriff under a body rule. *Reg. v. Sheriff of Middlesex, in Horne v. Jones*, 7 Dowl. P. C. 82; 1 Horn. & Hurl. 335, S. C.

Where the bail in their affidavit of sufficiency swore that they were not security for any person, "except the above-named defendant," the Court allowed them to amend it, by stating that they were not bail for any defendant "except in this action;" the costs of the opposition to be costs in the cause. *Warren v. De Burgh*, 7 Dowl. P. C. 96; S. P. nomine, *De Burgh's bail*, 1 Arnold, 371.

The sheriff may set aside an attachment obtained against him for not bringing in the body without making the affidavit required by Reg. M. T. 59 Geo. 3. For *semble, per Littledale*, J., such rule is no longer in force, 2 Jurist, 1066.

A sum of money having been paid into court in lieu of special bail under 7 & 8 Geo. 4, c. 71, s. 2; it was held, that an application on the part of the defendant, after issue had been joined, to take it out of court on rendering or putting in bail, was made too late. *Morris v. Shepherd*, 2 Jurist, 1069; *Low Jour. Rep. (N. S.) 21, S. C.*

Where money has been paid into court in lieu of special bail, and subsequently a rule for judgment as in case of a *caecus ad satisfaciendum* is moved for, the Court will not add to that rule an

pursuance thereof at any time after the commencement of proceedings before final judgment shall have been obtained therein; and that a defendant in custody upon any such arrest, and not previously served with a copy of the writ of summons, may be lawfully served therewith.

**DISCHARGE OF ORDER.**

VI. And be it enacted, that it shall be lawful for any person arrested upon any such writ of capias to apply at any time after such arrest to a judge of one of the superior courts at Westminster, or to the court in which the action shall have been commenced, for an order or rule on the plaintiff in such action to show cause why the person arrested should not be discharged out of custody (*p.*), and that it shall be lawful for such judge or court to make absolute or discharge such order or rule, and

for his charge forthwith.  
Judge may discharge defendant or not.

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application to take the money out of court; but that must be the subject of a separate rule, after the former one has been decided. *De Bedolliere v. Ryan*, 7 Dowl. P. C. 615.

Where a defendant had, after depositing money with the sheriff in lieu of bail, gone abroad without putting in and perfecting bail in due time, and it did not appear that he had any residence in this country, or had employed an attorney in the action, the plaintiff was allowed to take the money out of court, after serving a rule on the sheriff, and affixing a copy of it in the Queen's Bench Office. *Hunt v. M'Lachlan*, 7 Dowl. P. C. 708.

(*p.*) The statement of a party that a particular person is her attorney, before whom the affidavit was sworn, on which the application for a judge's order was made, is sufficient to support an objection to that affidavit founded on the provisions of Reg. Gen. H. T. 2 W. 4, r. 1, s. 6, although it is not positively sworn that he is the attorney employed. *Haddock v. Williams*, 7 Dowl. P. C. 327; *semel*, that the provisions of 1 Reg. Gen. H. T. 2 W. 4, s. 6, now extend to affidavits to hold to bail.

To support an application to rescind a judge's order made in pursuance of section 3, the defendant must positively swear that "*he is not about to leave England*," and the Court will not allow his affidavit to be amended after cause is shown against the rule. *Robinson v. Gardner*, 7 Dowl. P. C. 716.

*Prisoner discharged on entering Appearance.*

Order of  
judge may  
be appealed  
from.

to direct the costs of the application to be paid by either party, or to make such other order therein as to such judge or court shall seem fit: provided that any such order made by a judge may be discharged or varied by the court, on application made thereto by either party dissatisfied with such order (q).

**PRISONER'S DISCHARGE ON ENTERING APPEARANCE.**

Prisoners  
in custody  
on mesne  
process,  
who have  
not filed  
petitions  
under in-  
solvent  
acts, en-

VII. And be it enacted, that every prisoner who at the time appointed for the commencement of this act shall be in custody upon mesne process (r) for any debt or demand, and shall not have filed a petition to be discharged under the laws now in force for the relief of insolvent debtors, shall be entitled to his discharge upon entering a common appearance to the action (s): provided, nevertheless, that

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(q) An application to set aside an arrest made on a judge's order under section 3, on the ground of irregularity in process, must be made promptly, that is, within the ordinary time for putting in bail; and in order to excuse delay in such application on the ground of a previous one at chambers, the rule  *nisi* must be drawn up on reading the summons, or such previous application must be shown by affidavit. *Sugars v. Concanen*, 5 Mee. & Wels. 30; 7 Dowl. P. C. 391, S. C.; see also there cited, *Brashour v. Russell*, 4 Bing. N. C. 31; 5 Scott, 268; 6 Dowl. P. C. 185, S. C.

Where a party has been arrested under the provisions of the 3rd section by virtue of a judge's order made upon insufficient affidavits, the application for his discharge should be by motion to set aside the order, and not the writ of *capias*. *Hopkinson v. Salembier*, 7 Dowl. P. C. 493; 5 Mee. & Wels. 423; 18 Leg. Obs. 383, S. C.

(r) A defendant, who is brought up by *habeas corpus* to be charged in execution, is not in custody on *mesne* process, such writ being considered as a step towards execution. *Reynolds v. Simmonds*, 7 Dowl. P. C. 85; 1 Horn. & Hurl. 356.

*Quære.* Whether the writ of *pone per vadis* in the Court of Common Pleas at Durham, is within the provisions of this section? *Curl v. Elliot*, 2 Jurist, 1089.

(s) A party having been arrested on meane process was out on bail on the 1st October, 1838; after that day final judgment was signed, and on the 6th November following, a *capias ad satisfaciendum* was lodged at the sheriff's office for the pur-

*Prisoner discharged on entering Appearance.*

9

every such prisoner shall be liable to be detained, or titled to be after such discharge to be again arrested, by virtue discharged.

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poss of fixing the bail, but before it was returnable a motion was made to enter an *exoneretur* on the bail piece : the Court of Exchequer held, that the bail were not entitled to relief under this section. *Jackson v. Cooper*, 7 Dowl. P. C. 5 ; 4 Mee. & Wels. 353 ; 1 Horn & Hurl. 354, S. C.

Where the sheriff, being in default, put in bail before the 1st October, and on the 2nd November an attachment issued against him for not bringing in the body, it was held that the case was not within this section of the act, and consequently that the Court had no power to relieve him on entering a common appearance, the affidavit on which the application was founded having distinctly set forth that it was made by the sheriff without collusion with the defendant. *Reg. v. Sheriff of Middlesex* in *Horne v. Jones*, 7 Dowl. P. C. 82 ; *S. C. nomine, Rea v. Sheriff of Middlesex*, 4 Mee. & Wels. 529.

Where the defendant was out on bail when this act came into operation, but it appeared that he had since quitted England, and intended to remain abroad, the Court of Exchequer refused to allow an *exoneretur* to be entered on the bail-piece, as the defendant should first render himself, and then apply ; and that they were not bound to relieve a prisoner unless he was in actual custody on the 1st of October, 1838. *Lewis v. Ford*, 7 Dowl. P. C. 85 ; 1 Horn. & Hurl. 331 ; 4 Mee. & Wels. 361, S. C. ; *S. P. Dalton v. Gibb*, 7 Dowl. P. C. 143 ; 5 Bing. N. C. 113 ; 1 Arnold, 398, S. C. ; *Ashly v. Hughes*, 2 Jurist, 1016.

A party having been arrested on mesne process, escaped from prison before this act passed, but was retaken under an escape warrant after it came into operation :—Held, that he did not come within the provisions of this section, as being in custody at the commencement of the act, and therefore not entitled to his discharge. *Nias v. Milton*, 7 Dowl. P. C. 90 ; 4 Mee. & Wels. 359 ; 1 Horn. & Hurl. 357, S. C.

Where a defendant had been arrested, and had put in special bail previously to this act coming into operation ; the Court of Common Pleas held, that he was in custody within the meaning of this section, and that a judge at chambers had power to order an *exoneretur* to be entered on the bail-piece, on the defendant entering a common appearance. *Bateman v. Dunn*, 7 Dowl. P. C. 105 ; 5 Bing. N. C. 49 ; 1 Arnold, 374, S. C. ; *Abrahams v. Isherwood*, 2 Jurist, 921 ; but see *contra*, *Dalton v. Gibb*, 7 Dowl. 143 ; 5 Bing. N. C. 113 ; 1 Arnold, 398, S. C.

The Court will grant a rule for staying proceedings on the bail-bond, where the application is made on behalf of the de-

## *Making Debtor a Bankrupt.*

of any such special order as aforesaid (*t*), at the suit of the plaintiff at whose suit he was previously arrested, or of any other plaintiff.

### MAKING DEBTOR A BANKRUPT.

Manner of  
making  
debtor a  
bankrupt.

VIII. And be it enacted, that if any single creditor or any two or more creditors, being partners, whose debt shall amount to 100*l.* or upwards, or any two creditors whose debts shall amount to 150*l.* or upwards, or any three or more creditors whose debts shall amount to 200*l.* or upwards, of any trade within the meaning of the laws now in force respecting bankrupts, shall file an affidavit (*u*) or affidavits in her Majesty's courts of bankruptcy (*v*) that such debt or debts is or are justly due to him or them re-

fendant, without the production of an affidavit of merits, as required by the rule of Michaelmas Term, 59 Geo. 3. *Norris v. Brighton*, 7 Dowl. P. C. 144; 1 Arnold, 383, S. C.; S. C. nomine, *Norris v. Bracken*, 5 Bing. N. C. 114.

A defendant, who had paid money into Court in lieu of special bail, previous to this act coming into operation, is not entitled, under an equitable construction of this section, to have the money paid out to him. *Harrison v. Dickenson*, Mee. & Wels. 355; 7 Dowl. P. C. 6, S. C.; *Cowie v. Bremer*, 2 Jurist, 967, S. P.

Where the defendant was outlawed before this act came into operation, and after it had passed was taken on a *capias utlagatum*, the Court, on motion, reversed the outlawry upon the defendant's entering a common appearance, and paying all the costs, including those of the application. *Harvey v. O'Meara*, 7 Dowl. P. C. 725; 3 Jurist, 629, S. C.

(*t*) A judge has no authority to make an order for the detention of a prisoner in custody at the time of the passing of this act "until he shall give bail, or until further order," for, *per* Lord Denman, C. J., he has no jurisdiction to make his own further order one of the conditions of the defendant's discharge. *Boddington v. Wordley*, 1 Per. & Dav. 159; 1 Leg. Obs. 91, S. C.

(*u*) See form, No. 4, Appendix.

(*v*) This affidavit may be sworn before a master extraordinary in Chancery, and filed in the Registrar's office of the Court of Bankruptcy. *Ex parte Hall re Hall*, 3 Deacon 461.

spectively (*w*) ; and that such debtor as he or they verily believe is such trader as aforesaid, and shall cause him to be served personally with a copy of such affidavit or affidavits, and with a notice (*x*) in writing, requiring immediate payment of such debt or debts (*y*) ; and if such trader shall not, within twenty-one days after personal service of such affidavit or affidavits and notice, pay such debt or debts, or secure or compound for the same to the satisfaction of such creditor or creditors, or enter into a bond (*z*), in such sum, and with such two sufficient

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(*w*) *Quare.* Whether this affidavit need state the consideration, as in an affidavit to hold to bail? *Per* Sir J. Cross, "There is this difference: in the act of Parliament which requires an affidavit to hold to bail, that act requires the cause of action should be stated; this statute requires only the debt to be stated." *Ex parte Brown and another, in re Brown and another*, 1 Mont. & Chit. 196.

*Quare.* Whether this affidavit is defective, if it deposes to a debt greater than the creditor can establish to be due? *Ex parte Brown and another, in re Brown and another*, 1 Mont. & Chit. 198.

(*x*) See form, No. 5, Appendix.

(*y*) A notice given before the filing of the affidavit is irregular. *Ex parte Gibson*, 3 Deacon, 534.

(*z*) Course of proceedings before Mr. Commissioner Holdroyd, the effect of which is adopted by the other commissioners:—

Any debtor desirous of entering into a bond with sureties under the 8th section of the 1 & 2 Vic. c. 110, should cause to be given to the creditor, or his attorney, a notice in writing signed by the debtor, or his attorney, of the debtor's intention so to proceed. (*See form of bond, and of notice of giving security, Nos. 6 and 7, Appendix.*)

The names and descriptions of the proposed sureties should be fully stated in the notice, and also the day and time at which the debtor intends to proceed before the commissioner at the Court of Bankruptcy.

The notice should be twenty-four hours, at least, if the creditor and the debtor's proposed sureties reside in town; and two days, or more, if the creditor or the debtor's proposed sureties reside elsewhere, according to the distance and means of communication.

The sureties need not attend personally, but may make affidavit of their sufficiency. (*See form of affidavit of sufficiency of sureties, No. 8, Appendix.*)

### *Making Debtor a Bankrupt.*

sureties as a commissioner of the Court of Bankruptcy shall approve of (a), to pay such sum or sums as shall be recovered in any action or actions which shall have been brought, or shall thereafter be brought, for the recovery of the same, together with such costs as shall be given in the same, or to render himself to the custody of the gaoler of the court in which such action shall have been or may be brought according to the practice of such court, or within such time and in such manner as the said court or any judge thereof shall direct, after judgment shall have been recovered in such action (b), every such trader shall be deemed to have committed an act of bankruptcy on the twenty-second day

Copies of the affidavits of sufficiency should be annexed to the notice.

All affidavits intended to be used before the commissioner should be filed in the office of the Chief Registrar of the Court of Bankruptcy previous to the hearing, and office copies thereof taken. (*Fee for filing the above affidavits, 1s., and a charge of 1½d. per folio for office copies.*)

At the day and time stated in the notice, the debtor, or his attorney, should be prepared with the bond duly stamped, and with office copies of the affidavit of the execution thereof by the attesting witness, and of the affidavit of sufficiency, and of the affidavit of the service of notice of the debtor's intention to enter into the bond. (*See form of affidavit of the execution of bond, and service of notice of security, Nos. 9 and 10, Appendix.*)

With the consent of the creditor, or his attorney, the commissioner will approve of the bond without requiring affidavits. (*See form of such consent, No. 11, Appendix.*)

See form of deposition as to the act of bankruptcy, No. 12, Appendix.

(a) To enable a commissioner to certify his approval of the bond given by a debtor, it must be accompanied by an affidavit as to the sufficiency of the sureties. *Cathie's case*, 1 Legal Guide, 152.

(b) A defendant who has entered into the bond with two sureties, required by this section, is in the same situation as if he were at large on bail, and he may render even before judgment is recovered, according to the practice in the case of a defendant on bail. *Owestow v. Coates*, 3 Jurist, 434; 18 Leg. Obs. 91, S. C.

after service of such affidavit or affidavits and notice, provided a fiat in bankruptcy shall issue against such trader within two calendar months from the filing of such affidavit or affidavits, but not otherwise (c).

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(c) Where an affidavit of debt was filed for 100*l.*, part of an entire demand, and a copy of the affidavit and notice duly served, upon which the required security was given, and subsequently another affidavit was filed for the entire debt, and another copy and notice duly served, the Court would not order the second and amended affidavit, although for the same debt, to be taken off the file. *Ex parte Rose, in re Rose*, 1 Mont. & Chit. 149.

B. and P., carried on business as cotton spinners, at the Grove Mills, under the firm of B. and P., and becoming embarrassed, applied to the M. & L., District Banking Company for an advance ; when it was arranged, by a deed dated 22nd August, 1837, that the banking company should take the management of the concern into their hands, by means of J. their manager, under the firm of "the Grove Mills Company;" that B. and P., should conduct the business, as employees of the banking company, at a salary ; that the banking company should pay all debts, and repay themselves out of the profits ; and that, if they chose, finally to wind up and close the concern, they should give B. and P., a full release and discharge from all debts then or to become due. Under this arrangement, the affairs were carried on until the 3rd October, 1838, when notice was given to B. and P., that the company intended to close the concern ; and at the same time, J., the manager, intimated to B. and P., that "they would probably receive a notice from the company, with a view to make them bankrupts, but that it would be a mere matter of form, and that they need be under no apprehension concerning it."

On the 22nd October following, J., as manager, swore an affidavit of debt, and on the 25th, served the requisite notice on B. and P. The affairs having been wound up, B. and P., claimed a release, pursuant to the deed of August, 1837, and on the 6th November filed a bill in Chancery, praying to be declared so entitled. A negociation for a compromise of the suit was then entered into, and a memorandum of agreement, dated 13th November, was executed, by which B. and P., were, "to give up to the banking company all they had in the world, on condition that the company should release them from all their claims, and discharge their debts ; and it was provided that a clause should be inserted in the deed, making void the release, if B. and P., concealed or withheld any of their property." The proceedings in Chancery were altogether discontinued, and the respective solicitors of the par-

**EXECUTION OF WARRANT OF ATTORNEY AND COGNOVIT**

**Warrants of attorney** IX. And whereas it is expedient that provision should be made for giving every person executing

ties proceeded to prepare the last-mentioned deed, and the release to B. and P., and the banking company continued to deal with the property till the 30th November, 1838. On the 15th November, the twenty-one days after the notice given the previous month, expired. On the 30th November, the solicitors for the banking company wrote to the solicitors B. and P., saying, "that disclosures of improper acts by B. and P., had been made within the last three days, and that further proceedings with the proposed deeds should be stayed for the present," but still appearing to invite explanation. On the same day docket papers were prepared, and on the 1st December a docket was struck; on the 3rd the fiat was issued which was opened on the 6th:—Held, that no act of bankruptcy was committed; because, under the above circumstances, the banking company were to be considered as consenting to the default of payment beyond the twenty-one days, and that they had accepted security *pro tem.*, at and prior to the twenty-second day, so as to satisfy the notice given and the fiat was superseded with costs. *Ex parte Brown as another, in re Brown and another*, 1 Mont. & Chit. 17200.

On a petition to supersede, the usual course was, after the petitioner's counsel had opened the petition, to call on the petitioning creditor to support the fiat,—the *onus probandi* lying on him. But where the fiat issues under this section, as the petition shows that the proper affidavit of debt has been made and notice given, it is for the petitioner to show that the notice has been complied with, or a sufficient reason will not—the *onus probandi* lying on the petitioner, and not on the petitioning creditor, as heretofore. *Ex parte Brown as another, in re Brown and another*. 1 Mont. & Chit. 194.

An affidavit was filed against a trader, but on account of some irregularity in the required notice, the notice was withdrawn by the creditor; the Court refused to take the affidavit off the file on the application of the trader, since the creditor was entitled, if he chose, to give a fresh notice. *Ex parte Gibson*, 3 Deacon, 531.

Where an affidavit of debt has been filed, the sending good in part satisfaction of the demand on the day the docket is struck, is not an act of bankruptcy.

The day on which such affidavit is filed is included in the computation of the two calendar months allowed for the issuing of the fiat.

warrant of attorney to confess judgment, or a cognovit actionem (*d*), due information of the nature and vit actionem to be effect thereof; be it enacted, that from and after the time appointed for the commencement of this act, no warrant of attorney to confess judgment in any personal action, or cognovit actionem, given by any person (*e*), shall be of any force unless there shall be present some attorney of one of the superior courts on behalf of such person, expressly named by him (*f*), and attending at his request (*g*), to inform him of the

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A fraction of a day will not be calculated, to bring the fiat within the time allowed by the statute.

Per Sir G. Rose.—The act of bankruptcy, under this section, is not complete till the signing of the fiat within the time. *Ex parte Whitby re Whitby*, 8 Law Jour. Rep. (N. S.) 55.

(*d*) The giving a cognovit implies an authority to enter an appearance, and do all that is necessary to make the instrument effectual. *Richardson v. Daley and Rugglesford*, 7 Dowl. P. C. 25; 4 Mee. and Wels. 384, S. C. This case would now only be applicable in the event of the cognovit having been duly executed and attested according to the above provisions, since, by the 10th section, should the instrument be improperly executed, no subsequent proof can render it valid.

(*e*) An infant cannot bind himself by a cognovit; for these reasons, that he cannot appoint an attorney; nor can he state an account against himself, or do any act to prejudice his rights. *Oliver v. Woodruffe*, 7 Dowl. P. C. 170; 4 Mee. and Wels. 650, S. C.

(*f*) Although it is not indispensable that a defendant should expressly name an attorney to witness his execution of a cognovit; yet if he has not an opportunity of exercising a judgment or option in the choice of the attorney so attesting his execution, it will not be a naming within the provisions of this section. *Barnes v. Pindry*, 3 Jurist, 506.

It is not required that the attorney be originally named by the defendant, for it is sufficient, if he adopts the attorney named by the plaintiff, unless some fraud is shown. *Oliver v. Woodruffe*, 7 Dowl. P. C. 166; 4 Mee & Wels. 650, S. C.; see the cases there cited. *Fisher v. Papanicholas*, 2 Cr. & Mee. 215; 4 Tyr. 44, S. C.; *Bligh v. Brewer*, 1 C. M. & R. 651; 3 Dowl. P. C. 266; 5 Tyr. 222, S. C.

(*g*) Where a cognovit had been attested by an attorney who accompanied the plaintiff's son to the defendant's residence, and who afterwards carried the instrument to the

nature and effect (*h*) of such warrant or cognovit before the same is executed; which attorney shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be attorney for the person executing the same, and state that he subscribes as such attorney (*i*).

**COGNOVIT, &c., NOT FORMALLY EXECUTED, INVALID.**

**Warrant, &c., not formally executed, invalid.**

X. And be it enacted, that a warrant of attorney to confess judgment, or cognovit actionem not executed in manner aforesaid, shall not be rendered valid by proof that the person executing the same did in fact understand the nature and effect thereof, or was fully informed of the same.

**EXECUTION BY ELEGIT.**

**Sheriff empowered to deliver execution of lands, &c., to judgment creditor.**

XI. And whereas the existing law is defective in not providing adequate means for enabling judgment creditors to obtain satisfaction from the property of their debtors, and it is expedient to give judgment creditors more effectual remedies against the real and personal estate of their debtors than they possess under the existing law; be it therefore further enacted, that it shall be lawful for the sheriff, or

Queen's Bench Office to be filed, and there subscribed his name upon the back of it as the plaintiff's attorney's agent, the Court set it aside, on the ground that it had not been executed in the presence of an attorney attending at the defendant's request. *Rice v. Linstead*, 7 Dowl. P. C. 153; *S. P. nomine, Price v. Linstead*, 1 Arnold, 381; see also the cases there cited, *Hutson v. Hutson*, 7 T. R. 7; *Todd v. Gompertz*, 6 Dowl. P. C. 296; 1 Will. Woll. & Hodges, 69, S. C.; *Walker v. Gardner*, 4 B. & Adol. 371.

(*h*) If the *nature and effect* of a cognovit be explained to the defendant, it is immaterial that it has not been read over to him. *Oliver v. Woodruffe*, 7 Dowl. P. C. 166; 4 Mee. & Wels. 650, S. C.

(*i*) It is not requisite, in the attestation of a cognovit, that the attorney of the defendant should state himself to be an attorney *named* by the defendant; but it is sufficient if he subscribes and declares himself attorney for the defendant *Oliver v. Woodruffe*, 7 Dowl. P. C. 166; 4 Mee. & Wels. 650, S. C.

other officer to whom any writ of elegit, or any  
except in pursuance thereof, shall be directed, at  
the suit of any person, upon any judgment which at  
the time appointed for the commencement of this  
act shall have been recovered, or shall be thereafter  
recovered in any action in any of her Majesty's  
superior courts at Westminster, to make and deliver  
execution unto the party in that behalf suing, of all  
such lands, tenements, rectories, tithes, rents, and  
hereditaments, including lands and hereditaments of  
copyhold or customary tenure, as the person against  
whom execution is so sued, or any person in trust for  
him, shall have been seized or possessed of at the  
time of entering up the said judgment, or at any  
time afterwards, or over which such person shall at  
the time of entering up such judgment, or at any  
time afterwards, have any disposing power which he  
might without the assent of any other person exer-  
cise for his own benefit, in like manner as the sheriff  
or other officer may now make and deliver execu-  
tion of one moiety of the lands and tenements of any  
person against whom a writ of elegit is sued out (ii);  
which lands, tenements, rectories, tithes, rents, and  
hereditaments, by force and virtue of such execution,  
shall accordingly be held and enjoyed by the party  
to whom such execution shall be so made and deliv-  
ered, subject to such account in the court out of  
which such execution shall have been sued out as  
a tenant by elegit is now subject to in a court of  
equity: provided always, that such party suing out Proviso as  
execution, and to whom any copyhold or customary to copy-  
lands shall be so delivered in execution, shall be hold lands.  
liable, and is hereby required to make, perform, and  
render to the lord of the manor, or other person  
entitled, all such and the like payments and services  
as the person against whom such execution shall be  
issued would have been bound to make, perform, and  
render in case such execution had not issued; and  
that the party so suing out such execution, and to

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(ii) See 2 & 3 Vict. c. 29, s. 1, *post*, p. 143.

Proviso as  
to purcha-  
sers, mort-  
gagors, or  
creditors.

whom any such copyhold or customary lands shall have been so delivered in execution, shall be entitled to hold the same until the amount of such payments, and the value of such services, as well as the amount of the judgment, shall have been levied: provided also, that as against purchasers, mortgagees, or creditors who shall have become such before the time appointed for the commencement of this act, such writ of *elegit* shall have no greater or other effect than a writ of *elegit* would have had in case this act had not passed.\*

#### EXECUTION BY FIERI FACIAS.

Sheriff  
empowered  
to seize  
money,  
bank notes,  
&c.;

and to pay  
money or

XII. And be it enacted, that by virtue of any writ of *fieri facias* to be sued out of any superior or inferior court after the time appointed for the commencement of this act, or any precept in pursuance thereof, the sheriff or other officer having the execution thereof may and shall seize and take any money or bank notes, (whether of the Governor and Company of the Bank of England, or of any other bank or bankers,) and any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money (*j*), belonging to the person against whose effects such writ of *fieri facias* shall be sued out (*k*); and may and shall pay or

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\* See 2 & 3 Vict. c. 29, s. 1, *post*, p. 143.

(*j*) Although money and exchequer bills, when in the possession of a defendant, may be taken in execution, and are therefore an available security, yet when in the possession of a plaintiff, and within the jurisdiction, the Court of Queen's Bench held, that they were not sufficient property to exempt a plaintiff residing abroad from finding security for costs. *The Edinburgh and Leith Railway Company v. Dawson*, 7 Dowl. P. C. 573.

(*k*) The defendant having contracted for the sale of some property, the purchase-money was deposited by the vendee in the hands of a third party, for the use of the defendant; held, that this money could not be attached, and taken under a writ of *fieri facias*, for that writ only applies to money in the hands of the debtor, and not to money in the possession of a third party as trustee for him. *Per Parke, B., Robinson v. Peace*, 7 Dowl. P. C. 93.

deliver to the party suing out such execution any bank notes money or bank notes which shall be so seized, or a to execu-sufficient part thereof; and may and shall hold any tion credi-such cheques, bills of exchange, promissory notes, tor ; bonds, specialties, or other securities for money as a security or securities for the amount by such writ of *fieri facias* directed to be levied, or so much thereof as shall not have been otherwise levied and raised ; and may sue in the name of such sheriff or other and to sue officer for the recovery of the sum or sums secured for amount thereby, if and when the time of payment thereof secured by shall have arrived ; and that the payment to such change and sheriff or other officer by the party liable on any other secu-such cheque, bill of exchange, promissory note, rities. bond, specialty, or other security, with or without suit, or the recovery and levying execution against the party so liable, shall discharge him to the extent of such payment, or of such recovery and levy in execution, as the case may be, from his liability on any such cheque, bill of exchange, promissory note, bond, specialty, or other security ; and such sheriff or other officer may and shall pay over to the party suing out such writ the money so to be recovered, or such part thereof as shall be sufficient to discharge the amount by such writ directed to be levied ; and if, after satisfaction of the amount so to be levied, together with sheriff's poundage and expenses, any surplus shall remain in the hands of such sheriff or other officer, the same shall be paid to the party against whom such writ shall be so issued ; pro-  
viding that no such sheriff or other officer shall be to indem-bound to sue any party liable upon any such cheque, nity for bill of exchange, promissory note, bond, specialty, sheriff.  
or other security, unless the party suing out such execution shall enter into a bond, with two sufficient sureties, for indemnifying him from all costs and expenses to be incurred in the prosecution of such action, or to which he may become liable in conse-quence thereof, the expense of such bond to be deducted out of any money to be recovered in such action.

**LIEN OF A JUDGMENT.**

**Judgment  
to operate  
as a charge  
on real  
estate.**

XIII. And be it enacted, that a judgment already entered up, or to be hereafter entered up, against any person in any of her Majesty's superior courts at Westminster, shall operate as a charge upon all lands, tenements, rectories, advowsons, tithes, rents, and hereditaments (including lands and hereditaments of copyhold or customary tenure) of or to which such person shall at the time of entering up such judgment, or at any time afterwards, be seized, possessed, or entitled for any estate or interest whatever, at law or in equity, whether in possession, reversion, remainder, or expectancy, or over which such person shall at the time of entering up such judgment, or at any time afterwards, have any disposing power which he might without the assent of any other person exercise for his own benefit, and shall be binding as against the person against whom judgment shall be so entered up, and against all persons claiming under him after such judgment, and shall also be binding as against the issue of his body, and all other persons whom he might, without the assent of any other person, cut off and debar from any remainder, reversion, or other interest in or out of any of the said lands, tenements, rectories, advowsons, tithes, rents, and hereditaments; and that every judgment creditor shall have such and the same remedies in a court of equity against the hereditaments so charged by virtue of this act, or any part thereof, as he would be entitled to in case the person against whom such judgment shall have been so entered up had power to charge the same hereditaments, and had by writing under his hand agreed to charge the same with the amount

**Charge not  
to be en-  
forced until  
after the  
expiration  
of a year.** of such judgment debt, and interest thereon: provided that no judgment creditor shall be entitled to proceed in equity to obtain the benefit of such charge until after the expiration of one year from the time of entering up such judgment, or in cases of judgments already entered up, or to be entered

up before the time appointed for the commencement of this act, until after the expiration of one year from the time appointed for the commencement of this act; nor shall such charge operate to give the judgment creditor any preference in case of the bankruptcy of the person against whom judgment shall have been entered up, unless such judgment shall have been entered up one year at least before the bankruptcy\*: provided also, that as regards Proviso purchasers, mortgagees, or creditors, who shall have as to purchasers, become such before the time appointed for the chasers, commencement of this act, such judgment shall not &c. affect lands, tenements, or hereditaments, otherwise than as the same would have been affected by such judgment if this act had not passed: provided also, that nothing herein contained shall be deemed or taken to alter or affect any doctrine of courts of equity whereby protection is given to purchasers for valuable consideration without notice.

**JUDGMENT CHARGEABLE ON STOCKS, FUNDS, &c.**

**XIV.** And be it enacted, that if any person against Stock and whom any judgment shall have been entered up in shares in any of her Majesty's superior courts at Westminster, public funds and annuities, or any stock or shares of or in any public companies company in England (whether incorporated or not), belonging standing in his name in his own right, or in the to the name of any person in trust for him (*t*), it shall be debtor, and lawful for a judge of one of the superior courts, on standing in the application of any judgment creditor, to order his own name, to be that such stock, funds, annuities, or shares, or such charged by of them, or such part thereof respectively as he order of a judge.

\* See 2 & 3 Vict. c. 29, s. 1, *post*, p. 143.

(*t*) The defendant having contracted with a railway company for the sale of land, the purchase-money for which was deposited by the vendee in the hands of a third party, for the use of the defendant; it was held, that this money could not be attached, it not forming part of the funds of the company, and therefore not within the provisions of this section. *Robinson v. Peace*, 7 Dowl. P. C. 93.

shall think fit, shall stand charged with the payment of the amount for which judgment shall have been so recovered, and interest thereon, and such order shall entitle the judgment creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment debtor (*m*) : provided that no proceedings shall be taken to have the benefit of such charge until after the expiration of six calendar months from the date of such order.

#### ORDER CHARGING STOCK, FUNDS, &c.

Order of judge to be made in the first instance *ex parte*, and on no notice to the bank or company, to operate as a *dis-*  
*tringas.*

XV. And in order to prevent any person against whom judgment shall have been obtained from transferring, receiving, or disposing of any stock, funds, annuities, or shares hereby authorized to be charged for the benefit of the judgment creditor, under an order of a judge ; be it further enacted, that every order of a judge charging any government stock, funds, or annuities, or any stock or shares in any public company, under this act, shall be made in the first instance *ex parte*, and without any notice to the judgment debtor, and shall be an order to show cause only ; and such order, if any government stock, funds, or annuities standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is to be affected by such order, shall restrain the governor and company of the Bank of England from permitting a transfer of such stock in the meantime, and until such order shall be made absolute or discharged ; and if any stock or shares of or in any public company, standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is or are to be affected by any such order, shall in like manner restrain such public company from permitting a transfer thereof ; and that if after notice of such order to the person or persons to be restrained thereby, or in case of

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(*m*) See *Blake v. White*, note (*n*), *post*, p. 24.

### *Relinquishment of Securities.*

corporations, to any authorized agent of such corporation, and before the same order shall be discharged or made absolute, such corporation or person or persons shall permit any such transfer to be made, then, and in such case, the corporation or person or persons so permitting such transfer shall be liable to the judgment creditor for the value or amount of the property so charged and so transferred, or such part thereof as may be sufficient to satisfy his judgment; and that no disposition of the judgment debtor in the meantime shall be valid or effectual as against the judgment creditor; and further, that unless the judgment debtor shall within a time to be mentioned in such order show to a judge of one of the said superior courts sufficient cause to the contrary, the said order shall, after proof of notice thereof to the judgment debtor, his attorney or agent, be made absolute: provided that any such judge shall, upon the application of the judgment debtor, or any person interested, have full power to discharge or vary such order, and to award such costs upon such application as he may think fit.

#### **WHEN SECURITIES TO BE RELINQUISHED.**

XVI. And be it enacted, that if any judgment Securiti creditor, who under the powers of this act shall not realiz have obtained any charge, or be entitled to the to be reli benefit of any security whatsoever, shall afterwards, relinquished i and before the property so charged or secured shall taken in have been converted into money or realized, and execution the produce thereof applied towards payment of the judgment debt, cause the person of the judg ment debtor to be taken or charged in execution upon such judgment, then and in such case such judgment creditor shall be deemed and taken to have relinquished all right and title to the benefit of such charge or security, and shall forfeit the same accordingly.

*Decrees, &c., deemed Judgments.*

INTEREST ON JUDGMENTS.

Judgment debts to carry interest.

XVII. And be it enacted, that every judgment debt shall carry interest at the rate of four pounds per centum per annum from the time of entering up the judgment, or from the time of the commencement of this act in cases of judgments then entered and not carrying interest, until the same shall be satisfied; and such interest may be levied under a writ of execution on such judgment.

DECREES AND ORDERS CONSIDERED AS JUDGMENTS.

Decrees and orders of courts of equity, &c., to have effect of judgments.

XVIII. And be it enacted, that all decrees and orders of courts of equity, and all rules of courts of common law, and all orders of the Lord Chancellor or of the Court of Review in matters of bankruptcy, and all orders of the Lord Chancellor in matters of lunacy, whereby any sum of money, or any costs, charges, or expenses, shall be payable to any person, shall have the effect of judgments in the superior courts of common law, and the persons to whom any such monies, or costs, charges, or expenses shall be payable, shall be deemed judgment creditors within the meaning of this act; and all powers hereby given to the judges of the superior courts of common law with respect to matters depending in the same courts, shall and may be exercised by courts of equity with respect to matters therein depending, and by the Lord Chancellor and the Court of Review in matters of bankruptcy, and by the Lord Chancellor in matters of lunacy; and all remedies hereby given to judgment creditors are in like manner given to persons to whom any monies, or costs, charges, or expenses are by such orders or rules respectively directed to be paid (n).

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(n) Courts of equity will carry into execution their orders and decrees for costs by charging the government stock of the debtor, and for that purpose it is not necessary to give further proof of application for payment than is contained in the notice of the intended application to make the order for the

## JUDGMENTS TO BE REGISTERED.

XIX. Provided always, and be it further enacted, No judgment, decree, &c. to affect real estate, otherwise than as before the Act, until registered.  
that no judgment of any of the said superior courts, nor any decree or order in any court of equity, nor any rule of a court of common law, nor any order in bankruptcy or lunacy, shall by virtue of this act affect any lands, tenements, or hereditaments, as to purchasers, mortgagees, or creditors, unless and until a memorandum or minute containing the name and the usual or last known place of abode, and the title, trade, or profession of the person whose estate is intended to be affected thereby, and the court and the title of the cause or matter in which such judgment, decree, order, or rule shall have been obtained or made, and the date of such judgment, decree, order, or rule, and the account\* \* *Sic in act.* of the debt, damages, costs, or monies thereby re-

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charge absolute. *Blake v. White*, 3 Youn. & Coll. 434; 3 Jurist, 749, S. C.

Where a judge's order for payment of costs is made a rule of court, execution may at once be issued on it, without an application to the court. *Wallis v. Sheffield*, 19 Leg. Obs. 64; 3 Jurist, 1002, S. C.

By the first of the general orders, May 10, 1839, which applies to the courts of Chancery and the court of Exchequer in equity, it is ordered, "that every person to whom in any cause or matter pending in this court, any sum of money or any costs have been ordered to be paid, shall, after the lapse of one month from the time when such order for payment was duly passed and entered, be entitled by his clerk in court to sue out one or more writ or writs of *fieri facias*, or writ or writs of *elegit*, of the form hereinafter stated, or as near thereto as the circumstances of the case may require." See forms of these writs in the Appendix.

By the second order it is directed, "that upon every such order hereafter to be entered, the entering clerk of *this court* in *whose division the same may be*, shall, at the request of the party leaving the same, mark the day of the month and year on which the same shall be so left for entry, and no writ of *fieri facias* or *elegit* shall be sued out upon any such order, unless the date of such entry shall be so marked thereon as aforesaid." This order, omitting the words in italics, is in the form issued by the court of Exchequer in equity; but with those words, it applies to the courts of Chancery.

### Registering Judgments.

covered or ordered to be paid, shall be left with the senior master of the court of Common Pleas at Westminster, who shall forthwith enter the same particulars in a book in alphabetical order by the name of the person whose estate is intended to be affected by such judgment, decree, order, or rule; and such officer shall be entitled for any such entry to the sum of five shillings; and all persons shall be at liberty to search the same book on payment of the sum of one shilling (o).

(o) This section is now altered and amended by the 2 Vic. c. 11. ss. 1, 2, 3, 4, 5 and 6, which see *post*, p. 134, *et seq.*

Sec. 1, after reciting that "it is desirable that further protection should be afforded to purchasers against judgments, crown debts, and *lis pendens*," enacts, "that no judgments shall be docketted under the provisions of 4 & 5 W. & M. c. 20, after 4th June, 1839, but that the same shall be finally closed, without prejudice to the operation of any judgment already docketted and entered under the said recited Act, except so far as any such judgment may be affected by the provisions hereinafter contained."

Sec. 2, enacts, "that no judgment already docketted and entered under the said recited act, 4 & 5 W. & M. c. 20, shall, after the 1st of August, 1841, affect any lands, tenements or hereditaments, as to purchasers, mortgagees or creditors, unless and until such memorandum or minute thereof as is prescribed by the act 1 & 2 Vic. c. 110, shall be left with the senior master of the Common Pleas at Westminster, who shall forthwith enter the same in manner thereby directed in regard to judgments: such officer to be entitled for such entry to the sum of five shillings."

Sec. 3, enacts, "that in addition to the entry by the act 1 & 2 Vic. c. 110, or by this act required to be made in a book by the senior master, of the particulars to be contained in every memorandum or minute left with him of any judgment, decree or order, rule or order, he shall insert in such book the year and the day of the month when every such memorandum or minute is so left with him."

Sec. 4, enacts, "that all judgments, decrees or orders in any court of equity, rules of a court of common law, and orders in bankruptcy or lunacy, which, since the passing of 1 & 2 Vic. c. 110, have been registered under the provisions therein contained, or which shall hereafter be so registered, shall, after the expiration of five years from the date of the entry thereof, be void as to purchasers, mortgagees or creditors, unless a fresh registry is made within five years before the

## POWER TO FRAME NEW WRITS.

XX. And be it enacted, that such new or altered New writs writs shall be sued out of the courts of law, equity, <sup>to be</sup> and bankruptcy, as may by such courts respectively framed. be deemed necessary or expedient for giving effect to the provisions herein-before contained, and in such forms as the judges of such courts respectively shall, from time to time, think fit to order (*p*) ; and

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execution of the conveyance, settlement, mortgage, lease, or other deed or instrument vesting or transferring the legal or equitable right, title, estate, or interest in or to any such purchaser or mortgagee for valuable consideration, or as to creditors, within five years before the right of such creditors accrued, and so, *toties quoties*, at the expiration of every succeeding five years." The fee for such re-entry to be one shilling.

By sec. 5, it is provided and enacted, " that as against purchasers and mortgagees *without notice* of any such judgment, decrees or orders, rules or orders as aforesaid, none of such judgments, decrees or orders, rules or orders, shall bind or affect any lands, tenements, or hereditaments, or any interest therein, further or otherwise, or more extensively in any respect, *although duly registered*, than a judgment of one of the superior courts aforesaid would have bound such purchaser or mortgagee before the said act 1 & 2 Vic. c. 110, where it had been duly docketted, according to the law then in force."

And by sec. 6, it is provided and enacted, " that nothing in the said recited act 1 & 2 Vic. c. 110, nor in this act contained, shall extend to revive or restore any judgment which shall be extinguished or barred, nor shall the same extend to affect or prejudice any judgment as between the parties thereto, or their representatives, or those deriving as volunteers under them."

(*p*) In pursuance of the powers given in this section, the judges of the courts of law at Westminster promulgated the following order : " *It is ordered*, that the following forms of writs, framed by the judges pursuant to the statute 1 & 2 Vic. c. 110, s. 20, be used from and after the 1st day of March, 1839, with such alterations as the nature of the action, the description of the court in which the action is depending, the character of the parties, or the circumstances of the case, may render necessary, but that any variance, not being in matter of substance, shall not affect the validity of the writs sued out." *For the forms of these writs see Appendix.*

the execution of such writs shall be enforced in such and the same manner as the execution of writs of execution is now enforced, or as near thereto as the circumstances of the cases will admit; and that any existing writ the form of which shall be in any manner altered in pursuance of this act, shall nevertheless be of the same force and virtue as if no alteration had been made therein, except so far as the effect thereof may be varied by this act.

#### COURTS OF LANCASTER AND DURHAM.

Powers,  
&c., of this  
Act applic-  
able to the  
courts and  
judges at  
Westmin-  
ster to be  
applicable  
to courts  
of Lan-  
caster and  
Durham.

XXI. And be it enacted, that all the remedies, authorities, and provisions of this act applicable to her Majesty's superior courts of common law at Westminster, and the judgments and proceedings therein, shall extend to and be applicable to the court of Common Pleas of the county palatine of Lancaster, and the court of Pleas of the county palatine of Durham (q) within the limits of the jurisdiction of the same courts respectively; and the judgments of each of the said last-mentioned courts shall, within the limits of the jurisdiction of the same courts respectively, have the same effect in all respects as the judgments of any of her Majesty's said superior courts at Westminster under and by virtue of this act; and all powers and authorities hereby given to the judges or any judge of her Majesty's superior courts at Westminster, with respect to matters depending in the same courts, shall and may be exercised by the judges or any judge of the said court of Common Pleas at Lancaster, or the justices or any justice of the said court of Pleas at Durham, with respect to matters therein depending, and within the jurisdiction of the same courts respectively: provided always, that no judgment of either of the same last-mentioned courts shall by virtue of this act affect any lands,

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(q) This is not considered an inferior court. *Curl v. Elliot*, 2 Jurist, 1090.

ts, or hereditaments, as to purchasers, mort-  
or creditors, unless and until a memorandum  
ite containing the name and the usual or  
wn place of abode, and title, trade, or pro-  
of the plaintiff and defendant, the date  
uch judgment was signed, and the amount  
bt, damages, and costs thereby recovered,  
left with the prothonotary or deputy pro-  
ry, or some other officer to be appointed for  
pose by the said courts respectively, who  
rthwith enter the same particulars in a book  
abetical order by the name of the person  
estate is to be affected thereby ; and such  
shall be entitled for every such entry to the  
two shillings and sixpence ; and all persons  
at liberty to search the same book on pay-  
the sum of one shilling : and provided also,  
order or other proceeding under this act  
y any justice or justices of the said court of  
n Pleas of the county palatine of Lancaster,  
court of Pleas in the county palatine of Dur-  
hull be valid or effectual except made in open  
a one of the court or return days of the same  
or except such justice or justices shall be  
judge or judges of one of the said courts at  
inster : provided also, that no order directing  
son or persons to be held to bail under this  
r any order for discharging out of custody  
son or persons arrested under this act, shall  
le by any justice or justices of the court of  
n the county palatine of Durham who shall  
a judge or judges of one of the said courts of  
n law at Westminster.

**MOVAL OF JUDGMENTS OF INFERIOR COURTS.**

I. And be it enacted, that in all cases where For re-  
dgment shall be obtained in any action or moval of  
any inferior court of record in which, at the judgment  
passing of this act, a barrister of not less than <sup>of inferior</sup> years' standing shall act as judge, assessor, or <sup>courts.</sup>

assistant in the trial of causes, and also in all cases where any rule or order shall be made by any such inferior court of record as aforesaid, whereby any sum of money, or any costs, charges or expenses, shall be payable to any person, it shall be lawful for the judges of any of her Majesty's superior courts of record at Westminster, or if such inferior court be within the county palatine of Lancaster, for the judges of the court of Common Pleas at Lancaster, or for any judge of any of the said courts at chambers, either in term or vacation, upon the application of any person who at the time of the commencement of this act shall have recovered, or who shall at any time thereafter recover, such judgment, or to whom any money or costs, charges or expenses, shall be payable by such rule or order as aforesaid, or upon the application of any person on his behalf, and upon the production of the record of such judgment, or upon the production of such rule or order, such record, or rule or order, as the case may be, being respectively under the seal of the inferior court and signature of the proper officer thereof, to order and direct the judgment, or, as the case may be, the rule or order of such inferior court to be removed into the said superior court (*r*), or into the court of Common Pleas at Lancaster, as the case may be, and immediately thereupon, such judgment, rule or order, shall be of the same force, charge, and effect as a judgment recovered in or a rule or order made by such superior court, and all proceedings shall and may be immediately had and taken thereupon or by reason or in consequence thereof as if such judgment so recovered, or rule or order so made, had been originally recovered in or made by the said superior court, or into the court of Common Pleas at Lancaster, as the case may be; and

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(*r*) An order or decree on the equity side of the Stannary court in Cornwall may be made a rule of the court of Queen's Bench, and which will be absolute in the first instance. *Harvey v. Gibbard*, 7 Dowl. P. C. 616; 3 Jurist, 316, S. C.

ll the reasonable costs and charges attendant upon such application and removal shall be recovered in the manner as if the same were part of such judgment, or rule or order: provided always, that no such judgment, or rule or order, when so removed as aforesaid, shall affect any lands, tenements, or hereditaments, as to purchasers, mortgagees, or creditors, y further than the same would have done if the ne had remained a judgment, rule or order, of ch inferior court, unless and until a writ of execution thereon shall be actually put into the hands the sheriff or other officer appointed to execute same.

**POWERS OF INSOLVENT COURT CONTINUED.**

**XXIII.** And whereas it is expedient to continue, Powers the purposes hereinafter mentioned, the laws now vested in force for the relief of insolvent debtors in England, and to make further provision for the relief of insolvent debtors; be it therefore further enacted, that from and after the passing of this act, all the same are hereby continued and vested in the court to be continued by virtue of this act, as aforesaid, provided, in so far as the same relate to any persons who, before the time appointed for commencement of this act, shall have petitioned said court now established for relief, under the provisions of any act or acts for the relief of insolvent debtors in England, or of any persons who have ained their discharge by virtue of any act for the relief of insolvent debtors in England; and that all such matters shall and may be done by all persons relating to the matters of all such petitions which such persons might have done if the laws now in force with respect to insolvent debtors in England had been continued by this act.

**COURT, COMMISSIONERS, &c., TO BE CONTINUED.**

Court now established, and commissioners and officers, to be continued.

**XXIV.** And be it enacted, that the court now established for the Relief of Insolvent Debtors in England shall be continued, and that the present chief and other commissioners of the said court shall continue to be the chief and other commissioners of the court so hereby continued, and to preside therein; and that it shall be lawful for her Majesty, from time to time, upon any vacancy in any of the said offices of chief or other commissioner, by death or otherwise, to appoint other fit persons, being barristers at law of ten years' standing at the least, to be such chief or other commissioners, and to preside in the said court accordingly; and that the present chief clerk, provisional assignee, and other officers of the said court shall continue to be the chief clerk, provisional assignee, and other officers of the court so hereby continued; and that it shall be lawful for the said court, from time to time, upon any vacancy in any of the said offices by death or otherwise, to appoint other fit persons to be such chief clerk, provisional assignee, and other officers; and that the court so hereby continued as aforesaid shall at all times have power to appoint such officers as the lord chancellor, and the lords chief justices of the courts of Queen's Bench and Common Pleas, and the lord chief baron of the Exchequer, shall judge to be necessary, and in such manner as they shall direct.

**DURATION IN OFFICE OF COMMISSIONERS.**

Commissioners to hold their offices during good behaviour;

**XXV.** And be it enacted, that the commissions of the said chief commissioner and other commissioners of the said court hereby continued in their offices, or hereafter to be appointed as aforesaid, shall be continued and remain in full force during their good behaviour, notwithstanding the demise of her Majesty (whom God long preserve) or of any of her heirs or successors.

**REMOVAL OF COMMISSIONERS.**

XXVI. Provided always, and be it enacted, that but may be lawful for her Majesty, her heirs and successors, to remove any such chief or other commissioner of the said court upon the address of both Houses of Parliament.

removed  
upon ad-  
dress of  
both  
Houses.

**A COURT OF RECORD.**

XXVII. And be it enacted, that the said court to be for the Relief of Insolvent Debtors in England shall a court of be a court of record for the purposes of this act; and shall cause to be sealed with the seal of the said court all such records, proceedings, documents, and copies of the same as are hereinafter expressly required to be so sealed, and such other records, proceedings, documents, and copies of the same as he said court shall at any time direct; and that Powers of he said court, or any commissioner thereof, acting under the powers of this act, may adjourn any sitting of the said court or commissioner, as may be requisite, and may administer oaths, and examine all parties and witnesses upon oath, for the purposes of his act, and shall have such, like, and the same powers of compelling the attendance of witnesses, both before the said court, and before any commissioner thereof, acting as aforesaid, and before an officer of the court or examiner, as hereinafter mentioned, and before such justices as are hereinafter mentioned, and of requiring and compelling the production of books and writings, as are now possessed by any of the superior courts at Westminster, and to order any prisoner whose estate shall, by an order to be made under this act as hereinafter mentioned, have been vested in the provisional assignee of the said court, or any prisoner who shall be a necessary and material witness in any matter pending in the said court, to be brought before the said court or commissioner, or officer or examiner, or justices, as often as shall be requisite; and that the

*Powers of Commissioners.—Sittings of the Court.*

said court, or any commissioner thereof acting aforesaid, shall have the power of committing persons guilty of any contempt of the said court to the prison of the Queen's Bench, or to the common gaol of any county in which such person shall be shall usually reside; and that the said court shall have the power of fining in a summary way, or removing any of the officers of the said court who shall be guilty of any negligence, wilful or unnecessary delay, or other misconduct whatsoever: provided always, that the said court, or any commissioner thereof, shall not have the power of awarding costs against any person or persons whomsoever except in such cases only where such costs are hereinafter expressly mentioned and permitted to be awarded by this act; and that nothing herein contained shall extend to the compelling the attendance of any witness, unless the party on whose behalf such witness shall be required to attend, shall have previously tendered to such witness such allowance for expenses for his attendance as in the judgment of the said court, or of a commissioner there shall appear to be reasonable.

**WHERE COURT TO SIT.—POWER OF A SINGLE COMMISSIONER.**

Court to sit at the Court-house in Portugal Street, and elsewhere, if necessary.

One commissioner may hear matters out of court upon summons.

**XXVIII.** And be it enacted, that all proceedings and matters to be heard by the said court for Relief of Insolvent Debtors shall be heard and determined by the said court at the Court-house in the said court in Portugal Street, Lincoln's Fields, unless the said court shall at any time cause to appoint its sittings in any other place, it shall appoint the same accordingly, which it hereby empowered to do; and that it shall be lawful for any one commissioner to hear and determine out of court, upon summons to the proper parties matters and things relating to any person whose estate shall, by an order to be made under this act hereinafter mentioned, have been vested in provisional assignee of the said court, or to his es-

ects, or the assignee or assignees thereof, except the hearing, re-hearing, or any examination of such person; and the order made in any such cause by such commissioner shall be of as full force and effect, to all intents and purposes, as if the same had been made by the said court, unless the same upon application to the said court at the next ensuing sitting thereof, be by the said court rejected or altered.

**WHEN COURT TO SIT.**

IX. And be it enacted, that the said court for the relief of Insolvent Debtors shall sit for the relief of Insolvent Debtors shall sit twice a week. each of business twice at least in every week throughout the year, and one or more of the said commissioners shall attend for that purpose: provided nevertheless, that from and after the expiration of six weeks from the last day of Trinity term he first day of November in every year, the court shall have full power and authority to regulate the times and appoint the sittings of the said court, during the period aforesaid, shall be at any time as to the said court shall appear fit and necessary for the due administration of justice in the court; and that no adjournment of the said court during the period aforesaid, shall be at any time for more than six weeks.

Power to regulate sittings otherwise during certain periods.

**CIRCUITS OF COMMISSIONERS.**

X. And be it enacted, that three of the said commissioners shall from time to time severally circuits, and give their attendance at the assize or other towns or places at which any prisoner or prisoners shall be ordered to appear, as often provided; and that upon such prisoner's appearance before such commissioner on his circuit, commissioners be lawful for such commissioner to make all orders, and to give all such directions, and to such matters and things requisite for the discharging or remanding of such prisoner, and other-

make circuit.

Power of commis- sioner on circuit.

wise respecting such prisoner, and his schedule, and his creditors and assignees, as the said court for the Relief of Insolvent Debtors may make, give, or do in the matters of petitions heard by the said court, according to this act; and that in each and every matter to be heard and inquired into by such commissioner, according to the provisions of this act, such commissioner shall have the same power as the said court would have therein, if the same were heard and inquired into by the said court; and that all judgments, rules, orders, directions, and proceedings pronounced, made, and done in all and every the matters aforesaid by such commissioners, shall be transmitted to the said court, signed by such commissioner, to be a record of the said court, and to be kept as such among the records thereof.

#### MANNER OF MAKING CIRCUITS.

Time and manner of making circuits.

Travelling expenses to be paid by the Treasury.

One commissioner to remain in London. All Commissioners

XXXI. And be it enacted, that the said circuits shall be made three times in each year, if requisite, and that the time and manner of making the same, and the officers necessary to attend the commissioners thereupon, shall be regulated in such manner as shall be appointed by the commissioners of the said court, with the approbation of one of her Majesty's principal secretaries of state for the time being; and that it shall be lawful for the lord high treasurer or lords commissioners of her Majesty's Treasury of the United Kingdom of Great Britain and Ireland for the time being, to direct that such sum or sums shall be paid as may appear fit and necessary for the defraying the travelling expenses of such commissioners and officers in execution of their duties under this act; and that during the said circuits one of the said commissioners shall be attendant and presiding in the said court: provided always, that if on any particular occasion the said commissioners shall be of opinion that it would be expedient that all the said commissioners should be absent from the said court on circuits in different places at the same

### Circuits.

time, it shall be lawful for such commissioners to state such opinion, together with the grounds and reasons thereof, in writing, to one of her Majesty's principal secretaries of state for the time being; and thereupon, if such secretary of state shall approve thereof, and such approval shall be notified in writing to such commissioners by such secretary of state, it shall be lawful for all the said commissioners to be so absent from the said court as aforesaid at the same time, in such places respectively as shall be so stated and approved, and for that purpose to adjourn the said court for such time as shall be approved in and by such notification.

### CIRCUITS TO BE ADVERTISED.—NON-ARRIVAL OF COMMISSIONERS.

XXXII. And be it enacted, that the said court for the Relief of Insolvent Debtors shall cause notice of the time and place or places of the attendance of such commissioner in each assize or other town or place, according to this act, to be given in the London Gazette, and in some public journal or newspaper circulated in the county wherein such town or place is situate, once in each of the two weeks immediately preceding the time appointed for such attendance: provided always, that if on the day appointed for such attendance such commissioner not shall not attend at the court-house or other place appointed for such attendance, then and in every such case the court to be held by such commissioners shall be considered as adjourned to the ensuing day, not being a Sunday; and if the ensuing day should be a Sunday, then to the next day, Monday, and so on from day to day until the said commissioner shall give his attendance; and that all persons summoned or bound, or having occasion to attend such court, shall thereupon be bound to attend the same, according to every such adjournment, in the same manner in all respects as if the aid commissioner had regularly sat and so adjourned

Time of circuits to be advertised.  
arriving, court to stand adjourned.

**Cause of  
non-arrival  
to be signi-  
fied to  
secretary  
of state.**

the said court; and that when such commissioner shall so give his attendance he shall proceed to despatch the business of the said court in the same manner in all respects as if he had regularly sat, and had himself made such adjournment or adjournments of the same; and that he shall thereupon without delay state in writing the reason or cause which prevented his attendance on the day appointed for such attendance, and shall subscribe such statement, and shall send the same forthwith by her Majesty's post to one of her Majesty's principal secretaries of state.

#### ILLNESS OF COMMISSIONER.

**In case of  
illness of  
a commis-  
sioner  
another  
person may  
be ap-  
pointed to  
execute  
the duties.**

XXXIII. And be it enacted, that if the chief or other commissioner of the said court for the Relief of Insolvent Debtors shall at any time, not being the time of his circuit, be by illness or other reasonable cause for a time disabled from performing his duties, it shall be lawful for any fit person, being a barrister at law, and appointed by one of her Majesty's principal secretaries of state, to execute the duties of such chief or other commissioner during such disability; and if such disability shall occur during the time appointed for the circuit of such chief or other commissioner, it shall be lawful for any fit person, being a barrister at law, and nominated by such chief or other commissioner, to execute the duties of such chief or other commissioner on such circuit as aforesaid during such disability; and that all things done according to the provisions of this act by such person so nominated or appointed as aforesaid, as the case may be, during such disability as aforesaid, shall be good and valid to all intents and purposes as if the same had been done by such chief or other commissioner: provided always, that such chief or other commissioner, if such disability as aforesaid shall occur during the time appointed for his circuit, shall forthwith state the same, together with the cause thereof, and such nomination, in writing, and shall subscribe such statement, and

id the same forthwith by her Majesty's post  
of her Majesty's principal secretaries of

**WHAT FEES TO BE TAKEN.**

V. And be it enacted, that no fee or gra- No fees to  
ll be received or taken by the said court be taken  
relief of Insolvent Debtors, or any officer except such  
of or from any person whomsoever, on any as shall be  
whatsoever, except such fees as shall be established.  
be specified in a list thereof to be signed  
ommissioners of the said court, a copy of  
it shall always be exposed to view in the  
the said court (s).

**ON FOR DISCHARGE, WHEN, AND HOW MADE.**

7. And be it enacted, that from and after the Persons  
ointed for the commencement of this act, it imprisoned  
awful for any person who shall be in actual for debt  
within the walls of any prison in that part may apply  
nited Kingdom called England, upon any in a sum-  
whatsoever, for or by reason of any debt, mary way  
, costs, sum or sums of money, or for or by for dis-  
any contempt of any court whatsoever for charge (t).  
ent of any sum or sums of money, or of  
ed or untaxed, either ordered to be paid, or  
ayment of which such person would be  
purging such contempt (u), or in any man-

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**Table of Fees in the Appendix.**

section re-enacts the provisions of the 7 Geo. 4,  
, with these exceptions; that it does not require  
er to state in his petition, whether he has before  
this or any other court for his discharge, and ob-  
same, nor does it require him to state whether he  
een a bankrupt or procured his certificate; and the  
talics are also newly inserted.

try in an action for *crim. con.* was outlawed for non-  
f costs and damages; after he was taken on the  
*igatum*, an application was made for his discharge,  
he was accordingly adjudged entitled to after he  
mprisoned for four months; a prohibition was then

*Petition for Discharge.*

Time of petitioning. ner in consequence or by reason of such contention at any time within the space of fourteen days after the commencement of the actual custody such prisoner, whether such commencement shall have been in the same prison, or in any other prison, or the rules or liberties of any prison, or afterwards if the said court shall in any case think reasonable, permit the same, to apply by petition in a summary way to the said court for the Relief of Insolvent Debtors for his discharge from such custody, according to the provisions of this act; and in such petition shall be stated in what shall be stated the time and place of the first arrest of the petitioner such prisoner in the cause or causes wherein he shall then be detained, and the time of his commitment to the prison where he shall then be confined; and if such prisoner shall not have been in the same custody from the time of such first arrest, then the means and manner by which the change of custody of such prisoner has taken place, and also the names or names of the person or persons at whose suit or prosecution such prisoner shall, at the time of presenting such petition, be detained in custody, and the amount of the debt or debts, sum or sums of money, and of such costs as aforesaid, so far as the amount of such costs is ascertained, for which he shall be so detained; and such prisoner shall in such petition state whether such prisoner has given notice to the keeper of the gaol or prison in which he shall be confined of his intention to present the said petition, which notice the said prisoner is hereby required to give in writing to the keeper of such gaol or prison; and such prisoner shall in such petition state that he is willing that all his real and personal estate and effects shall be vested in the provisional

applied for to prevent such order being carried into effect, on the ground that an outlaw could not be heard in any court, except for the purpose of reversing his outlawry; held, that by the terms of the 7 Geo. 4, c. 57, s. 10, this court had power to hear the prisoner on his petition. *Reg. v. the Commissioners of the Insolvent Debtors Court, in re Hamlin,* 1 Will. Woll. & Hodges, 502.

*assignee for the time being of the estates and effects of insolvent debtors in England, according to the provisions of this act (v), and shall pray to be discharged from custody, and to have future liberty of his person, against the demands for which such prisoner shall be then in custody, and against the demands of all other persons who shall be or claim to be creditors of such prisoner at the time of presenting such petition (w); which petition shall be subscribed and filed.*

Petition to  
be signed

(v) Rule 10, orders, that with a prisoner's petition there shall be filed an account, in writing, in form prepared by the court, signed by the prisoner, and attested by his attorney (or in country cases by the keeper of the gaol), of all the real and personal estate and effects of such prisoner then in his possession, or under his control, stating the value; and if liable for rent, stating landlord's name and particulars of his demand, in order that such property may be duly ascertained and given up to the provisional assignee, and that the said account shall be signed, attested, and filed in duplicate: and in cases of persons confined in the prisons of London, Middlesex, and Surrey, excepting the gaol of Kingston-upon-Thames, every such estate paper shall have endorsed thereon a duplicate of the notice for appraisement given to the brokers of the court, with the day of leaving the same at their office marked thereon by them or by their clerk.

(w) Rule 11, orders, that every application by a prisoner for leave to file petition after the expiration of fourteen days allowed for that purpose in town cases, and after the expiration of twenty-one days from the commencement of the custody in country cases, shall be supported by the affidavit of the prisoner in form prepared by the court; in which shall be stated the degree, profession, or trade, and the last place of abode of such prisoner, and the time of his or her first arrest in the action wherein he or she is then detained, and the time of commitment to the prison where he or she is then confined; together with a statement of all monies paid or spent, and of all property spent, sold, made over, assigned, disposed of or in any manner parted with by him or her since such first arrest, and in what manner, and to whom; and also the cause of not having sooner presented such petition: and such application shall be made by petition, with the said affidavit and the said gaoler's certificate annexed; and there shall also be annexed such account in writing of estate and effects as is in all cases required by the 10th rule of court to be filed with the petition; which account shall be verified by the said affidavit: and on such application being granted, the duplicate of the

*Petition for Vesting Order.*

by the said prisoner, and shall forthwith be filed in the said court (*x*).

**PETITION BY DETAINING CREDITOR FOR VESTING ORDER.**

**Detaining creditors of prisoners in execution may apply by petition to Insolvent Debtors court for an order to vest debtor's estate in provisional assignee of court.**

XXXVI. And be it enacted, that if any prisoner who at the time appointed for the commencement of this act shall have been committed to any prison or gaol, and charged in execution for any debt, damages, or any costs, or sum or sums of money, or committed for or by reason of any contempt of any court whatsoever for nonpayment of any sum or sums of money, or of costs, taxed or untaxed, either ordered to be paid, or to the payment of which such prisoner would be liable in purging such contempt, or in any manner in consequence or by reason of such contempt, shall not, within twenty-one days next after the time appointed for the commencement of this act, make satisfaction to the creditor or creditors at whose suit such prisoner shall have been so committed or charged in execution for such debt, damages, costs, sum or sums of money, or to the person or persons entitled to the money for the nonpayment of which such prisoner shall have been in contempt, or to the payment of which such prisoner would be liable in consequence or by reason of such contempt; or if any prisoner who after the time appointed for the commencement of this act shall be committed to any prison or gaol, and charged in execution for any debt or damages,

said account shall be delivered to the officer of the court, at the time of filing the petition:—the gaoler's certificate will be transferred to the petition. (See rule 10, note (*v*), *and*, p. 41.)

(*x*) Rule 5, orders, that every petition in form prepared by the court shall be signed in the presence of the attorney of the prisoner or creditor petitioning, or of the keeper of the gaol in which the prisoner petitioning shall be confined, and such attorney or keeper shall attest the same accordingly.

Rule 6, orders, that in all cases there shall be filed with the petition, a certificate from the gaoler, of the day or days, and cause or causes of detainer against the prisoner.

or any costs, or sum or sums of money, or committed for or by reason of any such contempt as aforesaid, shall not, within twenty-one days next after such prisoner shall be so committed or charged in execution as aforesaid, make satisfaction to the creditor or creditors at whose suit such prisoner shall have been so committed or charged in execution for such debt, damages, costs, sum or sums of money, or to the person or persons entitled to the money for nonpayment of which such prisoner shall have been in contempt, or to the payment of which such prisoner would be liable in consequence or by reason of such contempt; then and in any of the said cases it shall be lawful for any such creditor or creditors, or person or persons entitled to such money as aforesaid, to apply by petition in a summary way to the said court for the Relief of Insolvent Debtors for an order vesting the real and personal estate and effects of such prisoner in the provisional assignee for the time being of the estates and effects of insolvent debtors in England, according to the provisions of this act (*y*); and such petition shall be signed by the party or parties so applying (*z*); and in such petition shall be stated the time and place of the commitment or charge in execution of such prisoner at the suit of the party or parties so applying, and the amount of the debt or sum of money for which such prisoner shall have been so committed or charged in execution; and such petition shall be supported by such evidence, by affidavit or otherwise, of the truth of the matters therein stated, as the said court shall think fit to require (*a*); and the

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(*y*) By the 8th rule, it is ordered, that before a vesting order is made on petition of a creditor, there shall be annexed to such petition a certificate of the proper officer that no prior petition has been filed in the case since the commencement of the prisoner's custody.

(*z*) This petition must, by rule 5, be signed in the presence of the attorney of the petitioning creditor, and such attorney must attest the same accordingly. And see rule 10, *ante*, n. (*v*), p. 41.

(*a*) It is ordered, by the 7th rule, that with the petition of

*Vesting of Prisoner's Estate, &c.*

party or parties presenting such petition shall then by state that he or they is or are desirous that such prisoner should be ordered to file a schedule of his property according to the provisions of this act, which should thereupon be brought up before the said court, to be dealt with according to the provisions of this act; and such petition and the evidence in support thereof shall forthwith be filed in the said court; and the said court shall and may require such prisoner to file his schedule (*b*), and shall also may cause such prisoner to be brought up to be dealt with according to this act, and all things to be done thereupon or preparatory thereto as in other cases according to this act.

**PRISONER'S ESTATE, &c. TO VEST BY ORDER.**

Prisoner's estate and effects, except wearing apparel, &c. not exceeding 20*l.*, and future estate, to be vested in

**XXXVII.** And be it enacted, that upon the filing of such petition by such prisoner, or on the filing of such petition by such creditor or creditors as aforesaid, and the evidence in support thereof, as the case may be, it shall be lawful for the said court for the Relief of Insolvent Debtors, and such court is hereby authorized and required, to order that all the real and personal estate and effects of such prisoner, both within this realm and abroad, except the wearing

a creditor there shall be filed an affidavit of such creditor, stating the accounts between himself and prisoner, the securities held by him, the benefit accrued from his judgment, and other matters as contained in the form of affidavit prepared together with the petition, under direction of the court.

(*b*) Rule 9, orders, that when a vesting order of the estate of a prisoner has been made on the petition of a creditor, notice thereof, together with an order to file schedule, shall forthwith be given to such prisoner by service of a copy of the same by a messenger of the court, and that delivery to the gaoler or other known officer of the prison in which, or in the rules or liberties of which, such prisoner is confined, shall be deemed good service of such notice and order upon the prisoner in such case: which delivery shall be made personally when the gaol is within ten miles from the Court-house in Portugal Street, and by letter, post paid, where the gaol is at a greater distance.

, bedding, and other such necessaries of such provisional  
and his family, and the working tools and  
effects of such prisoner, not exceeding in the  
value of twenty pounds, and all the  
estate, right, title, interest, and trust of  
risoner in or to any real and personal estate  
ects within this realm or abroad which such  
r may purchase, or which may revert, de-  
be devised, or bequeathed, or come to him,  
e shall become entitled to his final discharge  
uance of this act, according to the adjudica-  
de in that behalf; or in case such prisoner  
tain his full discharge from custody without  
udication being made by the said court, then  
uch prisoner shall be so fully discharged from  
; and all debts due or growing due to such  
r, or to be due to him or her before such dis-  
as aforesaid, shall be vested in the provisional  
e for the time being of the estates and effects  
ent debtors in England (c); and such order  
e entered of record in the same court, and  
tice thereof shall be published as the said  
hall direct; and such order when so made  
ithout any conveyance or assignment, vest all  
and personalestate and effects of such prisoner,  
such future real and personal estate and effects  
said, of every nature and kind whatsoever, and  
debts as aforesaid, in the said provisional assign-  
rovided always, that in case the petition of  
ch prisoner shall be dismissed by the said  
uch vesting order made in pursuance of such  
shall from and after such dismissal be null  
d to all intents and purposes: provided also,  
case any such vesting order as aforesaid  
come null and void by the dismissal of the

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In an action of tort brought by a pauper plaintiff, who  
ome insolvent, and obtained his discharge since the  
ement of the action, the court would not compel the  
to give security for the costs, although the benefit of  
, if obtained, would vest in them. *Andrews v. Marris*  
*her*, 7 Dowl. P. C. 712.

### *Prisoner's Petitioning.*

prisoner's petition, all the acts theretofore done by the said provisional assignee, or any person or persons acting under his authority according to the provisions of this act, shall be good and valid, and no action or suit shall be commenced against the said provisional assignee, nor against any person doing any act under his authority, except to recover any property, estate, money, or effects of such prisoner detained after an order made by the said court for the delivery thereof, and demand made thereupon; provided also, that when such vesting order shall have been made on the petition of a creditor aforesaid, it shall be lawful for the said court, if it shall seem just and right, but not without previous notice made to the satisfaction of the said court of the consent of the petitioning creditor, to make order declaring such vesting order to be null and void, and the same shall thereupon be null and void to all intents and purposes.

#### **WHEN PRISONER MAY PETITION, &c.**

Prisoners  
within the  
walls only  
to petition;

except in  
certain  
cases.

XXXVIII. And be it enacted, that no prisoner shall upon his own petition be entitled to the benefits of this act who shall not be at the time of filing his petition, and during all the proceedings thereon, in actual custody within the walls of the prison, without any intermission of such imprisonment by leave of any court or otherwise (d): provided always, that if, after any such prisoner shall have obtained an order to be brought up in order to be dealt with according to the provisions of this act, it shall appear to the satisfaction of the said court, by the oath or affidavit of a physician, surgeon, or apothecary, and such other evidence as the said court may require, that

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(d) An insolvent who had been brought up to be heard on his petition, had on his return to the prison from the court, and in the custody of the officer of the prison, gone to a house some distance out of the direct road for the purpose of getting refreshment, and remained there upwards of an hour and a half; the commissioners held, that this was an escape, and dismissed his petition. *Lockwood's Case*, 1 Legal Guide, 108.

prisoner cannot continue to reside within the of any such prison without serious injury to health of such prisoner, or that, for the sake of health of the prisoners in general, it is necessary he number thereof within the walls of any such should be reduced, it shall be lawful for the court to dispense with such actual custody of ch prisoner within the walls as is hereinbefore oned : provided that if any such prisoner, obtained such dispensation, shall go beyond les and liberties in which he shall in pursuereof be confined, such prisoner shall thereby rived of all benefit of this act: provided also, Power to ter any order shall have been made under this Insolvent recting any insolvent to be brought up in Debtors o be dealt with according to the provisions of court to of Insolvent Debtors, if such court shall think direct pri- soner to be discharged to do (e), and on such notice to the detain- on his find- editor or creditors of such insolvent as the said ing sure- shall deem proper, to direct such insolvent to tend at the charged out of custody, on his finding two time and ent sureties to enter into a recognizance to place of ovisional assignee of the said court in such hearing. is the said court shall think fit (f), with a

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Where a party is in custody for the amount of a ver-  
ained in an action for *crim. con.*, the court will not ad-  
to bail under the provisions of this section. *Gomme's  
Legal Guide*, 90.

Rule 19, orders, that a prisoner desiring to be dis-  
l on sureties till the hearing, must apply (which he  
as soon as schedule is filed) in the office of the court  
or country, as the case may be), and deliver the names,  
necessary parties entered in the proper printed form,  
ng at the same time the affidavits of the proposed sure-  
will thereupon receive a form of notice to be served on  
ining creditor and the proposed sureties, containing the  
ment for entertaining such application, with instruc-  
y the court: where the hearing is to be by the court  
don, the prisoner must attend the court when such ap-  
n is entertained; and the gaoler will be ordered to  
im before the court accordingly.

condition that such insolvent shall duly appear at the time and place fixed for the hearing of such insolvent, and on every adjourned hearing, and shall abide by the final judgment of the said court or a commissioner thereof on his circuit, or such justices as hereinafter mentioned, and on such other terms (if any) as the said court shall think fit to impose, and to issue a warrant directed to the gaoler ordering the discharge of such insolvent from custody accordingly, and that after such discharge such insolvent shall be free from arrest or imprisonment by any creditor whose debt shall be specified in the schedule filed by such insolvent as hereinafter mentioned until the time appointed for the hearing of such insolvent, and for such further time (if any) as the said court shall by endorsement on such order from time to time appoint : provided always nevertheless, that in case any insolvent so discharged out of custody shall not duly appear at the time and place fixed for the hearing or any adjourned hearing of such insolvent (not being prevented by illness or other lawful impediment, to be allowed of by the said court), the recognizance so entered into shall be forfeited, and the amount secured thereby shall be recoverable in a summary way by a distress and sale of the goods and chattels of such sureties as the said court shall by their order direct ; and the amount so recovered shall be applied for the benefit of the creditors of such insolvent in like manner as if the same were part of his estate and effects ; and the said court may also issue a warrant authorizing any person or persons to be therein named to apprehend and arrest such insolvent, and deliver him into the custody of the gaoler or keeper in whose custody such prisoner was at the time when he was so discharged as aforesaid ; and such gaoler or keeper is hereby required to receive such prisoner again into his custody ; and all detainers which were in force against him at the time of such discharge, or which shall have since been duly lodged against him, shall thereupon be deemed to be in force : provided fur-

ther, that any insolvent so discharged out of custody as aforesaid, shall, on his appearing before the said court or commissioner or justices, be deemed and considered, for all the purposes of this act, in the custody in which he was at the time he was so discharged (*i.*).

**FILING PETITION AN ACT OF BANKRUPTCY.**

**XXXIX.** And be it enacted, that the filing of the petition of every person in actual custody, who shall be subject to the laws concerning bankrupts, and who shall apply by petition to the said court for his discharge from custody, according to this act of bankruptcy, if

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(*s*) This section is materially altered by the 2 & 3 Vic. c. 39, ss. 2, 3, 4, 5, and 6, which see *post*, p. 146, *et seq.*

Sec. 2, enacts, that the commissioners of the court may appoint, by one or more commission or commissions, such and so many fit and proper persons as they shall think necessary in all and every the several towns and counties in England and Wales, and the town of Berwick-upon-Tweed, to take and receive the recognizance or recognizances of sureties residing at a greater distance than ten miles from the Court-house in Portugal street, for the due appearance of insolvent debtors before the court in such form as the court shall direct.

Sec. 3, enacts, that sureties residing more than ten miles from the Court-house in Portugal-street, may appear before a commissioner so appointed, and enter into a recognizance in such form and manner as may be prescribed by the court, and that such recognizance when taken shall be transmitted and filed in the said court with an affidavit of the due taking of the same, and which shall be of the like force and effect as if taken before the court itself, and that the party taking such recognizance shall be entitled to a fee of two shillings and six-pence and no more.

Sec. 4, enacts, that the commissioners of the said court, may make rules for regulating the amount and the manner of taking such recognizances.

Sec. 5, enacts, that any commissioner of the court on his circuit may take and receive such recognizances, which on being transmitted shall be filed without oath on payment of the usual fees.

Sec. 6, enacts, that as soon as such sureties have justified by affidavit and the recognizances have been duly filed, the court shall forthwith order the insolvent's discharge.

*Bankruptcy.—Vesting of Estate.*

within a certain time; in which case order avoided.

act, shall be accounted and adjudged a bankruptcy from the time of filing such and that any fiat in bankruptcy issuing against a person and under which he shall be declared bankrupt before the time appointed by the said act and advertised in the London Gazette, for sooner to be brought up to be dealt with to this act, or at any time within two months from the time of making any such aforesaid, whether upon the petition of sooner or the petition of any such creditor said, shall have the effect of divesting the personal estate and effects of such person the said provisional assignee: provided always the filing of such petition shall not be deemed an act of bankruptcy unless such person be so bankrupt before the time so advertised as or within such two calendar months as but that every such order as aforesaid shall be and valid notwithstanding any fiat in bankruptcy under which such person shall be declared after the time so advertised as aforesaid, the expiration of such two calendar months aforesaid.

**ESTATE, &c., TO VEST, NOTWITHSTANDING BANKRUPTCY.**

Order to be filed although avoided by commission of bankruptcy;

and court shall proceed to hear

XL. Provided always, and be it enacted where the order vesting the estate and effects of such prisoner in the provisional assignee of the said court, in pursuance of the provisions of this act, shall be or become void by reason of such prisoner being declared bankrupt within such period mentioned, or being an uncertificated bankrupt at the time of such order, the said order notwithstanding, together with the petition of such prisoner, if any, remain of record in the said court, the said court shall and may require such prisoner to file his schedule, and shall and may cause such prisoner to be brought up to be dealt with

this act, and all things to be done thereupon or and adju-  
reparatory thereto, as in other cases, according to dicate as in  
this act; and the said court shall and may, at any other  
time when it shall seem fit, appoint other assignee or cases.  
assignees in such case in the same manner as in  
other cases; and that if, at any time after such If insol-  
vesting order shall have been made, such prisoner vent ob-  
tains his certificate under any such fiat in tains his  
bankruptcy, the rights, powers, title, and interest of certificate,  
the provisional assignee and other assignee or assign- of assignees  
ees appointed under this act in, over, and respect- afterwards  
any property, real or personal, whatsoever, to be the  
remaining to such prisoner after the obtaining of same as in  
such certificate, or thereafter in any way coming to other  
him, and under or in pursuance of the warrant of cases.  
attorney to be executed by such prisoner under the  
provisions of this act, shall from and after the ob-  
taining of such certificate, be the same as if the  
vesting order made under this act had been valid at  
the time of the making thereof: provided always, Not to af-  
that nothing herein contained shall be construed to fect title of  
affect the title, rights, and interests of the assignees assignees  
under any such fiat in bankruptcy, or to alter or of bank-  
diminish the effect of any such certificate as afore- rupt, or  
said, but that the title, rights, and interests of such of certi- operation  
last-mentioned assignees, and the benefit of such ficate.  
certificate to such prisoner, shall be the same to all  
intents and purposes as if this act had not been  
made.

**WHEN ESTATE VESTED, PRISONER NOT SUPERSEDEABLE.**

XLI. And be it enacted, that no prisoner whose Prisoner estate shall by an order under this act have been not to be vested in the said provisional assignee, shall, after discharged for want of the making of such order, be discharged out of plaintiff custody, as to any action, suit, or process for or proceeding concerning any debt, sum of money, damages, or in his claim, with respect to which an adjudication can, action.  
under the provisions of this act, be made by or by

*Provisional Assignee.*

virtue of any supersedeas (*j*), judgment of non-pros, or judgment as in the case of a nonsuit, for want of the plaintiff or plaintiffs in such action, suit, or process proceeding therein.

**POWER AND DUTIES OF PROVISIONAL ASSIGNEE.**

**Provisional assignee to take possession of estates, &c. vested in him, and sell the same if the court directs ;**

**paying the expenses out of proceeds ;**

**XLII.** And be it enacted, that it shall be lawful for the provisional assignee of the said court for the Relief of Insolvent Debtors to take possession himself, or by means of a messenger of the said court, or other person or persons appointed by him, of all the real and personal estate and effects of every such prisoner vested in such provisional assignee by virtue of any such order as aforesaid (*k*), and, if the said court shall so order, to sell or otherwise dispose of such goods, chattels, and personal estate, or any part thereof (*l*), and of the real estate of such prisoner, according to the provisions herein-after made with regard to the sale of such real estate, and out of the proceeds of such real and personal estate to defray, in the first place, all such costs and expenses of taking possession, or of seizing and selling the same, as shall be allowed by the said court, and to account for the produce of such

(*j*) This section does not operate so as to take away a prisoner's right to discharge under the 48 Geo. 3, c. 123, s. 1, its only effect being, to prevent a *supersedeas* at common law. *Chew v. Lye*, 7 Dowl. P. C. 465.

(*k*) Rule 27, orders, that in every case to be heard by a commissioner on circuit, in which there shall have been any property in the possession or under the control of the prisoner to be given up to the provisional assignee, there shall be obtained and produced at the hearing a certificate from the provisional assignee, or other sufficient voucher, that such property has been duly given up or accounted for.

(*l*) Rule 26, orders, that the provisional assignee shall in each case, after vesting order made, sell all goods, chattels, and personal estate of the prisoner of which such provisional assignee shall take possession according to the statute; and shall account for the produce to the court.

able or disposition to the said court; and it shall be to sue in lawful for the said provisional assignee to sue in his own name, if the said court shall so order, for the recovering, obtaining, and enforcing of any estates, debts, effects, or rights of any such prisoner; and all and every the real and personal estate, money, and effects, vested in or possessed by such provisional assignee by virtue of such order as aforesaid, shall not remain in him if he shall resign or be removed from his office, nor in his heirs, executors, or administrators in case of his death, but shall in every such case go to and be vested in his successor in office appointed by the said court as aforesaid.

Property  
name, if  
the court  
directs.  
him to go  
to his suc-  
cessor in  
office.

**ALLOWANCE TO PRISONER DURING CONFINEMENT.**

XLIII. And be it further enacted, that the said court for the Relief of Insolvent Debtors may order and direct such provisional assignee as aforesaid, or such assignee or assignees as are hereinafter mentioned, to pay to any such prisoner, out of his or her estate and effects, such allowance for his or her support and maintenance during such prisoner's imprisonment, and previous to the adjudication in the matter of his petition, or for the expense of making out and filing his schedule, as to the said court shall seem reasonable and fit.

Court may  
order an  
allowance  
to prisoner  
during his  
confine-  
ment, or for  
expense of  
schedule.

**ACTS BY ASSIGNEES VALID, ALTHOUGH PRISONER DISCHARGED.**

XLIV. Provided always, and be it enacted, that Where in case any prisoner as to whose estate and effects any such vesting order as aforesaid shall have been made shall by the consent or default of his detaining creditor or creditors be discharged out of custody without any adjudication being made in that behalf by the said court for the Relief of Insolvent Debtors, all the acts done before such discharge by the said provisional assignee, or other assignee or assignees appointed as hereinafter provided, or other person

prisoner is  
discharged  
out of cus-  
tody, acts  
of assign-  
ees to be  
valid.

*Appointment of Assignees.*

No action  
to be  
brought  
against  
them where  
assign-  
ment is  
avoided.

or persons acting under his or their authority according to the provisions of this act, shall be and valid; and that in such case, or in case vesting order as aforesaid shall be avoided by fiat in bankruptcy thereafter issuing against prisoner, as hereinbefore provided, no action shall be commenced against such provision signee, or against any assignee or assignees appointed under this act, nor against any person dealing under his or their authority, except to recover any property, estate, money, or effects of such sooner detained after an order made by the court for the delivery thereof and demand thereupon.

**POWER TO APPOINT ASSIGNEES.**

**Power of  
Insolvent  
Debtors  
court to  
appoint  
assignees.**

XLV. And be it enacted, that it shall be for the said court for the Relief of Insolvent Debtors at any time after the making any such vesting as aforesaid as to the same court shall seem expedient, to appoint a proper person or persons assignee or assignees of the estate and effects of such prisoner for the purposes of this act (*m*) when such assignee or assignees shall have signed to the said court his or their acceptance of the appointment, the estate, effects, rights, and of such prisoner vested in such provisional assignee as aforesaid, shall immediately, by virtue of such appointment, and without any conveyance or instrument, vest in the said assignee or assignees, for the benefit of the creditors of such pris-

(*m*) Rule 25, orders, that assignees will be appointed expedient, by the court or a commissioner, at any time after the vesting order made. In a case heard at Berwick, a resolution by the justices will be attended to.

*N. B.* Parties applying for appointment of assignees shall liberty to take into the office such vouchers as they think fit, showing the wish of a majority or other party of the creditors. Appointments will be made on proof of desire of such majority, unless some cause to the contrary shall appear in any case.

respect of or in proportion to their respective debts, according to the provisions of this act; and every such appointment shall after such acceptance thereof be entered of record of the said court, and such notice thereof shall be published as the said court shall direct; and every person so appointed assignee shall be deemed to be an officer of the said court, and shall be liable as such to the controul thereof (n): provided always, that it shall be lawful for the said court to direct any fee or remuneration for the performance of duties in getting in and distributing the estate of any insolvent debtor, whether by any assignee or by the provisional assignee, in case of such distribution being effected without the appointment of any other assignee, which shall not exceed the rate of five per centum on the sum received as produce of such estate.

**COPY OF VESTING ORDER TO BE EVIDENCE.**

**XLVI.** And be it enacted, that a copy of any order under this act vesting the estate and effects of any prisoner in the provisional assignee of the estates and effects of insolvent debtors, or of the appointment, under the provision last hereinbefore contained, of an assignee or assignees of such estate and effects, such copy being made upon parchment, and purporting to have the certificate of the provisional assignee of the said court, or his deputy appointed for that purpose, endorsed thereon, and to be sealed with the seal of the said court, shall, in all courts and places, and without further proof, be recognised and received as sufficient evidence of such order and appointment respectively having been made, and of the title of the provisional assignee, and of such other assignee or assignees respec-

Certified copy of  
order and  
appointment to be  
evidence.

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(n) An assignee duly appointed is considered an officer of the court, and consequently has power to search a prisoner's room for the purpose of discovering any secreted property, and the court will, to enforce such search, grant their order for the same if required. *In re Ford*, 1 Legal Guide, 48.

Proviso for tively, under the same : provided always, that where any conveyance or assignment of any real or personal property of an insolvent debtor would be required to be registered, enrolled, or recorded in any registry office in England, Wales, or Ireland, or in any registry office, court, or other place in Scotland, or any of the dominions, plantations, or colonies belonging to his Majesty, then and in every such case such certified copy as hereinbefore is described of such order under this act, vesting the estate and effects of any prisoner in the provisional assignee of the said Insolvent Debtors court, and a like certified copy of the appointment of an assignee or assignees under this act (if any such appointment shall have been made), shall be registered in the registry office, court, or place wherein such conveyance or assignment as last aforesaid would require to be registered, enrolled, or recorded ; and the registry hereby directed shall have the like effect, to all intents and purposes, as the registry, enrolment, or recording of such conveyance or assignment as last aforesaid would have had ; and the title of any purchaser of any such property as last aforesaid for valuable consideration, without notice of any such order or appointment as aforesaid, who shall have duly registered, enrolled, or recorded his purchase deed previously to the registry hereby directed, shall not be invalidated by reason of such order as aforesaid, or the appointment of an assignee or assignees as aforesaid, or the vesting of such property in him or them consequent thereupon respectively, unless a certified copy of such orders, and a certified copy of such appointment, if any, shall be registered as aforesaid within the times following : (that is to say,) as regards the United Kingdom of Great Britain and Ireland, within two months after the date of such order and appointment respectively, and as regards all other places within twelve months from the date thereof respectively.

**ASSIGNEE TO SELL ESTATE AND EFFECTS OF PRISONER.**

XLVII. And be it further enacted, that the assignee or assignees of the estate and effects of any such prisoner shall, with all convenient speed after his or her appointment, use his or their best endeavours to realize and get in the estate and effects of such prisoner, and shall with all convenient speed make sale of all such estate and effects; and if such prisoner shall be interested in or entitled to any real estate, either in possession, reversion, or expectancy, such estate, within the space of six months after the appointment of such assignee or assignees, or within such other time as the said court shall direct, shall be sold by public auction (*p*), in such manner, and at such place or places, as shall thirty days before any such sale be approved, in writing under their hands, by the major part in value of the creditors of such prisoner entitled to the benefit thereof, who shall meet together on notice of such meeting published fourteen days previous thereto in the London Gazette, and also in some daily newspaper printed and published in London or within the bills of mortality, if the prisoner before his or her going to prison resided in London or within the bills of mortality, and if such prisoner resided elsewhere within the United Kingdom, then in some printed newspaper which shall be generally circulated in or near the place where such prisoner resided at the time aforesaid; and in case such prisoner shall be entitled to any copyhold or customary state, a certified copy of such vesting order as aforesaid; and a like certified copy of the appointment of such assignee or assignees as aforesaid, shall be entered on the court rolls of the manor of which such copyhold or customary estate shall be holden,

(e) The provisions of this section are in effect similar to those of 7 Geo. 4, c. 57, s. 20.

(p) The assignees may dispose of an insolvent's real estate by private contract, notwithstanding the directions in 7 Geo. 4, c. 57, s. 20, that it shall be sold by public auction. *Mather v. Priestman*, 17 Leg. Obs. 12.

*Sale, &c., of Property.—Power to Mortgage.*

and thereupon it shall be lawful for such assignee or assignees to surrender or convey such copyhold or customary estate to any purchaser or purchasers of the same from such assignee or assignees as the said court shall direct; and the rents and profits thereof shall be in the meantime received by such assignee or assignees for the benefit of the creditors of such prisoner, without prejudice nevertheless to the lord or lords of the manor of which any such copyhold or customary estate shall be holden.

**DISPOSAL OF ANNUITIES, PROPERTY, &c., IN THE  
DISCRETION OF THE COURT.**

**Discretion in court as to the disposal of property in certain cases.**

XLVIII. And whereas persons whose estates may by an order under this act have been vested in the said provisional assignee may be entitled to annuities for their own lives, or other uncertain interests, or to reversionary or contingent interests, or to property under such circumstances that the immediate sale thereof for payment of their debts may be very prejudicial to them, and deprive them of the means of subsistence which they might otherwise have, after payment of their debts; and it may be proper in some cases to authorize the raising of money by way of mortgage for payment of the debts or part of the debts of such person, instead of selling the property of such person for that purpose; be it enacted, that in all such cases it shall be lawful for the said court to take into consideration all circumstances affecting the property of any such person; and if it shall appear to the said court that it would be reasonable to make any special order touching the same, it shall be lawful for the said court so to do, and to direct that such property as it may be expedient not to sell, or not to sell immediately, according to the provisions of this act, shall not be so sold, and from time to time to order and direct in what manner such property shall be managed for the benefit of the creditors of such person until the same can be properly sold, or until payment of all such creditors, according to the provisions of this act, shall have

been made, and to make such orders touching the sale or disposition of such property as to the said court shall seem reasonable, considering the rights of the creditors of such person to payment of their demands, and the future benefit of such person after payment of his debts, and upon such terms and conditions with respect to the allowance of interest on debts not bearing interest, or other circumstances, as to the said court shall seem just ; and if it shall appear to the said court that the debts of such person can be discharged by means of money raised by way of mortgage on any property of such person, instead of raising the same by sale, it shall be lawful for the said court so to order, and to give all necessary directions for such purpose, and generally to direct all things which may be proper for the discharge of the debts of such person in such manner as may be most consistent with the interests of such person in any surplus of his or her effects after payment of such debts.

**ASSIGNEES TO EXECUTE POWERS.**

**XLIX.** And be it enacted, that all powers vested Assignees in any such prisoner whose estate shall by an order under this act have been vested in the provisional assignee which such prisoner might legally execute for his own benefit (except the right of nomination to any vacant ecclesiastical benefice), shall be and are hereby vested in the assignee or assignees of the real and personal estate of such prisoner by virtue of this act, to be by such assignee or assignees executed for the benefit of all and every the creditors of such prisoner under this act in such manner as such prisoner might have executed the same.

**ACCEPTANCE OF LEASES BY ASSIGNEES.**

**L.** And be it enacted, that in all cases in which any such prisoner shall be entitled to any lease or lease agreement for a lease, and his assignee or assignees accepted by

*Acceptance of Leases.—Actions by Assignees.*

assignees,  
the insol-  
vent not  
liable for  
the rent.

**Assignees**  
not deter-  
mining  
whether to  
accept the  
lease, the  
lessor may  
apply to the  
court.

shall accept the same, and the benefit thereof, part of such prisoner's estate and effects, the prisoner shall not be or be deemed to be liable to pay any subsequent rent to which his discharge, adjudicated according to this act, may not appear nor be in any manner sued after such acceptance respect or by reason of any subsequent non-observance or non-performance of the conditions, covenants or agreements therein contained : provided that in all such cases as aforesaid it shall be lawful for the lessor, or person agreeing to make such lease, his heirs, executors, administrators, or assigns, if the said assignee or assignees shall decline, upon his or their being required so to do, to determine whether he or they will or will not accept such lease or agreement for a lease, to apply to the said court praying that he or they may either so accept the same, or deliver up such lease or agreement for a lease, and the possession of the premises demised or intended to be demised ; and the said court shall thereupon make such order as in all the circumstances of the case shall seem meet and just, and such order shall be binding on all parties.

**ASSIGNEES MAY SUE, COMPOUND, OR SUBMIT TO ARBITRATION.**

**Assignees**  
may sue in  
their own  
names ;

may make  
compo-]  
sition for  
debts ;

LI. And be it enacted, that it shall be lawful for the assignee or assignees of any such prisoner, and such assignee or assignees is and are hereby empowered, to sue from time to time as there may be occasion, in his or their own name or names, for the recovery, obtaining, and enforcing of any estate, effects, or rights of such prisoner, but in trust for the benefit of the creditors of such prisoner, according to the provisions of this act, and to give such discharge and discharges to any person or persons who shall be respectively indebted to such prisoner as may be requisite ; and to make compositions with any debtors or accountants to such prisoner, where the same shall appear necessary, and to take such reasonable part of any such debts as can upon such

composition be gotten in full discharge of such debts and accounts; and to submit to arbitration any difference or dispute between such assignee or assignees and any person or persons for or on account or by reason of any matter, cause, or thing relating to the estate and effects of such prisoner: provided nevertheless, that no such composition or submission to arbitration shall be made, nor any suit in equity be commenced, by any such assignee or assignees, without the consent in writing of the major part in value of the creditors of such prisoner, who shall meet together pursuant to a notice of such meeting, to be published at least fourteen days before such meeting in the London Gazette, and also in some newspaper most usually circulated in the neighbourhood of the place where such prisoner had his or her last usual residence before his or her imprisonment as aforesaid, nor without the approbation of the said court, or of one of the commissioners thereof.

may submit differences to arbitration. Proviso for consent of creditors to compositions and arbitra-tions. To be published in the London Gazette and in some newspaper most usually circulated in the neighbourhood of the place where such prisoner had his or her last usual residence before his or her imprisonment as aforesaid, nor without the approbation of the said court, or of one of the commissioners thereof.

**QUALIFICATION OF CREDITORS TO VOTE.**

LII. And be it enacted, that all matters wherein creditors shall vote, or wherein the assent or dissent of creditors shall be exercised in pursuance of or in carrying into effect this act, every creditor shall be accounted such in respect of such amount only as upon an account fairly stated between the parties, after allowing the value of mortgaged property, and other such available securities and liens, shall appear to be the balance due; and that all disputes arising in such matters concerning any such amount shall upon application duly made in that behalf be examined into by the said court, or any commissioner thereof on his circuit, who shall have power to determine the same, and, if it seem fit, to refer the examination thereof to an officer of the said court, or to an examiner duly appointed in pursuance of this act: provided always, that the amount in respect of which any such creditor shall vote in any such matter shall not be conclusive of

to vote according to balance due to them on account fairly stated.

*Abatement of Suits.—Transfer of Stocks.*

the amount of his or her debt for any ulterior purposes, in pursuance of the provisions of this act.

**DEATH, &c., OF ASSIGNEES NOT TO ABATE SUITS.**

**Suits not to be abated by death or removal of assignees.**

LIII. And be it enacted, that whenever any such assignee or assignees shall die or be removed, or new assignee or assignees shall be appointed in pursuance of the provisions of this act, no action at law or suit in equity shall be thereby abated, but the court in which any action or suit is depending may, upon the suggestion of such death or removal and new appointment, allow the name or names of the surviving or new assignee or assignees to be substituted in the place of the former; and such action or suit shall be prosecuted in the name or names of the said surviving or new assignee or assignees, in the same manner as if he or they had originally commenced the same.

**POWER TO ORDER TRANSFER OF STOCK.**

**Where the prisoner is beneficially entitled to stock, the court may order a transfer.**

LIV. And be it enacted, that if any such prisoner shall at the time of filing such petition as aforesaid, whether such petitions shall have been preferred by himself or by any such creditor as aforesaid, or at any time before such prisoner shall become entitled to his final discharge according to this act, have any government stocks, funds, or annuities, or any of the stock of any public company, either in England, Scotland, or Ireland, standing in his own name in his own right, it shall be lawful for the said court for the Relief of Insolvent Debtors, whenever it shall deem fit so to do, to order all persons whose act or consent is thereto necessary to transfer the same into the name of such assignee or assignees as aforesaid; and all such persons whose act or consent is so necessary as aforesaid are hereby indemnified for all things done or permitted pursuant to such order.

**ASSIGNEES NOT ENTITLED TO INCOME OF BENEFICE, &c.**

LV. And be it enacted, that nothing in this act contained shall extend to entitle the assignee or assignees of the estate and effects of any such prisoner, being a beneficed clergyman or curate, to the income of such benefice or curacy, for the purposes of this act: provided always, that it shall be lawful for such assignee or assignees to apply for and obtain a sequestration of the profits of any such benefice for the payment of the debts of such prisoner; and the order appointing an assignee or assignees of such prisoner, in pursuance of this act, shall be a sufficient warrant for the granting of such sequestration, without any writ or other proceedings to authorize the same; and such sequestration shall accordingly be issued, as the same might have been issued upon any writ of *levavi facias*, founded upon any judgment against such prisoner.

**ASSIGNEES NOT ENTITLED TO PAY OR PENSION OF OFFICERS.**

LVI. And be it enacted, that nothing in this act contained shall extend to entitle the assignee or assignees of the estate and effects of any such prisoner, being or having been an officer of the army or navy, or an officer or clerk, or otherwise employed or engaged in the service of her Majesty, in the customs or excise, or any civil office, or other department whatsoever, or being or having been in the naval or military service of the East India Company, or an officer or clerk or otherwise employed or engaged in the service of the court of directors of the said company, or being otherwise in the enjoyment of any pension whatever under any department of her Majesty's Government or from the said court of directors, to the pay, half pay, salary, emoluments, or pension of any such prisoner, for the purposes of this act: provided always, that it shall be lawful for the said court to order such portion of the pay, half pay or pen-

sion may be pay, salary, emoluments, or pension of any ~~and~~  
obtained on prisoner, as on communication from the said court  
application. to the secretary at war, or the lords commissioners  
of the Admiralty, or the commissioners of the C  
ustoms or Excise, or the chief officer of the department  
to which such prisoner may belong or have belonged  
or under which such pay, half pay, salary, emolu  
ments, or pension may be enjoyed by such prisoner,  
or the said court of directors, he or they may re  
spectively, under his or their hands, or under the  
hand of his or their chief secretary, or other chief  
officer for the time being, consent to in writing,  
be paid to such assignee or assignees, in order that  
the same may be applied in payment of the debt  
of such prisoner; and such order and consent being  
lodged in the office of her Majesty's paymaster  
general, or of the secretary of the said court of  
directors, or of any other officer or person appointed  
to pay, or paying, any such pay, half pay, salary,  
emoluments, or pension, such portion of the said  
pay, half pay, salary, emoluments, or pension as  
shall be specified in such order and consent, shall be  
paid to the said assignee or assignees, until the said  
court shall make order to the contrary.

#### GOODS IN POSSESSION OF PRISONER DEEMED HIS PROPERTY.

Goods in possession of prisoner, whereof he was reputed owner, to be deemed his property.

No assignment of vessels under

LVII. And be it enacted, that if any such prisoner shall, at the time of his arrest, or other commencement of his imprisonment, by the consent and permission of the true owner thereof, have in his possession, order, or disposition any goods or chattels whereof such prisoner was reputed owner, or whereof he had taken upon him the sale, alteration, or disposition as owner, the same shall be deemed to be the property of such prisoner, so as to become vested in the provisional assignee of the said court by the order made in pursuance of this act; provided that no transfer or assignment of any ship or vessel, or any share thereof, made as a security for any debt or debts, either by way of mortgage or assignment

y registered according to the provisions of an 3 & 4 W. 4, made in the session of parliament held in the c. 55, to be d and fourth years of the reign of his late affected. jesty King William the Fourth, intituled "An t for the registering of British Vessels," shall be alidated or affected by reason of such possession, er, or disposition of the same as aforesaid.

**DISTRESS ONLY AVAILABLE FOR A YEAR'S RENT.**

LVIII. And be it enacted, that no distress or dis- Distress ses for rent made and levied after the arrest or not to be er commencement of the imprisonment of any available for son whose estate shall, by any such order as more than resaid, have been vested in the provisional as- one year's rent. see, upon the goods or effects of any such per- , shall be available for more than one year's rent rued prior to the making of such order, but that landlord or party to whom the rent shall be due, ll and may be a creditor for the overplus of the t due, and for which the distress shall not be ilable, and entitled to all the provisions made for litors by this act.

**VOLUNTARY CONVEYANCES, &c., VOID AGAINST  
ASSIGNEES.**

LIX. And be it enacted, that if any such prisoner Voluntary ll, before or after his or her imprisonment, being preference insolvent circumstances, voluntarily convey, as- fraudulent 1, transfer, charge, deliver, or make over any and void as against ite, real or personal, security for money, bond, assig- (r), note, money, property, goods, or effects nees (q).

?) This section is similar to the 7 Geo. 4, c. 57, s. 32.

?) A party being in insolvent circumstances offered his cre- rs a composition, which one of them at the time refused ceopt, but afterwards, upon signing the composition deed, le a secret agreement with the debtor to be secured the amount of his debt by bills for the balance, which were ordingly given, and afterwards paid; the court held, that insolvent could not recover back the amount paid on the s, as money had and received to his use, and that it made

whatsoever, to any creditor or creditors, or to a person or persons in trust for, or to or for the benefit, or advantage of any creditor or credit, every such conveyance, assignment, transfer, charge, delivery, and making over, shall be deemed and hereby declared to be fraudulent and void as against the provisional or other assignee or assignees of a prisoner appointed under this act (s) : provided always, that no such conveyance, assignment, transfer, charge, delivery, or making over, shall be deemed fraudulent and void unless made within three months before the commencement of such imprisonment, or with the view or intention, by the party so conveying, assigning, transferring, charging, delivering, or making over, of petitioning the said court for his discharge from custody under this act (t).

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no difference whether he paid the bills in consequence of an action brought against him on them, or without such action. *Wilson v. Ray*, 18 Leg. Obs. 42.

(s) In order to show that a conveyance of property by an insolvent to his creditor is not a voluntary and fraudulent conveyance under 7 Geo. 4, c. 57, s. 32, it is sufficient to prove that it was given in consequence of a *bond fide* demand made by the creditor on the insolvent for payment, and it is not necessary to give evidence of any more direct pressure upon him for the purpose. *Morgan and another, assignees of Pennell v. Baker*, 2 Jurist, 1068 ; and see *Doe d. Boydell v. Gillett*, 2 C. M. R. 579 ; 1 Tyr. & G. 114, S. C.

(t) A. being in difficulties, and having been served with writs at the suit of several creditors, applied to C. and D., who were attorneys, for their advice and assistance. After several ineffectual attempts to make an arrangement, it was finally resolved, at a meeting of the creditors, that A.'s property should be immediately sold, and thereupon he employed an auctioneer for that purpose, and directed him to pay the balance of the proceeds (first deducting his own charges), to C. and D., which was accordingly done ; a second meeting of the creditors took place, at which five shillings in the pound was offered, but being refused, A. went to prison, and subsequently obtained his discharge under the Insolvent Act ; upon which, C. and D. claimed to retain a portion of the money paid to them by the auctioneer in discharge of their bill of costs : held, in an action by the assignees to recover the mon-

*visions of 3 Geo. 4, c. 39, extended to Assignees.*

**RAUDULENT EXECUTION OF WARRANT OF ATTORNEY.**

**LX.** And whereas an Act passed in the third year Provision  
the reign of his late Majesty King George the of 3 G. 4  
arth, intituled "An Act for preventing frauds c. 39, ex.  
on creditors, by secret warrants of attorney to tended to  
nfect judgment :" and whereas it is expedient to nees of  
tend the provisions of such act; be it therefore insolvent  
acted, that the last-mentioned act shall extend to  
> provisional or other assignee or assignees of  
ery prisoner whose estate shall after the expiration  
twenty-one days next after his execution of such  
arrant of attorney, or giving of such cognovit ac-  
>tionem as therein mentioned, be vested in the provi-  
ional assignee of the said court for the Relief of  
solvent Debtors by virtue of this act, as if the  
st-mentioned act had been expressly herein enact-  
d ; and every such warrant of attorney, and judg-  
ent and execution thereon, and every such cog-  
ovit actionem, and judgment entered up thereon,  
nd execution taken out on such judgment, as are  
clared by the last-mentioned act to be fraudulent  
nd void against the assignees mentioned therein,  
hall be deemed equally fraudulent and void against  
he provisional or other assignee or assignees of such  
risoner appointed under this act, and such provi-  
ional or other assignee or assignees shall be entitled  
o recover back and receive, for the use of the cre-  
itors of such prisoner, all and every the monies  
eived and effects seized under or by virtue of any  
uch judgment or execution.

**WARRANT OF ATTORNEY, &c., GIVEN BEFORE IMPRISON-  
MENT NOT TO BE ACTED ON AFTER.**

**LXI.** And be it further enacted, that in all cases Warrant  
where any prisoner whose estate shall have been attorney

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say, that this was not a voluntary transfer in favour of a par-  
ticular creditor within the provision of the 7 Geo. 4, c. 57,  
s. 32. *Wainwright and another, assignees of Shackell v. Cle-  
ment*, 1 Horn. & Hurl. 395.

and cognovit actionem not to be acted upon against goods of insolvent after his imprisonment.

vested in the said provisional assignee under act shall have executed any warrant of attorney confess judgment, or shall have given any cognovit actionem, or bill of sale, whether for a valuable consideration or otherwise, no person shall, after commencement of the imprisonment of such prisoner avail himself or herself of any execution issued or be issued upon any judgment obtained or to be obtained upon such warrant of attorney or cognovit actionem, or of such bill of sale, either by sale and sale of the property of such prisoner, or part thereof, or by sale of such property thereto seized, or any part thereof, but that any persons to whom any sum or sums of money shall be due in respect of any such warrant of attorney or cognovit actionem, or of such bill of sale, shall and be a creditor or creditors for the same under this

#### **ASSIGNEES TO FILE ACCOUNTS, AND MAKE DIVIDENDS.**

**Assignees  
to file  
accounts.**

LXII. And be it further enacted, that the provisional assignee shall keep account from day to day, the same to be of record in the said court, all monies received and paid, and of every thing done by him and under him in the matter of every estate of any such prisoner vested in him, and shall make oath of the truth of every such account so often as he shall be duly required so to do; and that every other assignee of any such estate at the end of three months at the furthest from the time of his appointment, or sooner if the said court shall direct, and so from time to time as occasion shall require or the said court shall direct, shall make up an account of such estates, and make oath writing, before any person before whom affidavits by this act directed to be sworn, that such account contains a fair, just, and particular account of estate and effects of such prisoner got in by or such assignee, and of all payments necessarily made or deducted therefrom, and of all expenses shown to be allowed in respect thereof, up to the time of filing such account, or to some ulterior time, if

e ; which account so sworn, together with a minute concerning the probable assets of the estate (if any), shall be filed with the proper officer of the said court, and thereupon and at the time of so filing the same appointment shall be made for the examination of such accounts, and for taxation of all costs and charges claimed by such assignee ; and Accounts examination shall be had of the proceedings of the to be aid provisional assignee, or of any other assignee or audited. assignees, as the case may be, and of all the matters of his or their account, by the court or a commissioner thereof, or an examiner duly appointed before my such assignee shall proceed to a dividend ; and Debts to be ascertained upon such examination there shall appear to be in the hands of such assignee or assignees any balance wherewith a dividend may be made, proceedings and divi- hall be had forthwith under the direction of the court for making such dividend, and also, when d made. t shall appear necessary, for correcting and ascertaining the list of creditors entitled to receive the same ; and notice of any meeting ordered to be held or such ascertaining of debts or for declaring dividend thereupon, or for both purposes, shall be given or such time and place and in such manner as the court shall at any time or in any case direct ; and in case such dividend shall be made before ad- How divi- adjudication shall have been made with respect to dence to be such prisoner as hereinafter provided, the same made. shall be made amongst the creditors of such prisoner who shall prove their debts in pursuance of any order of the said court to be made in that behalf ; and in case such dividend shall be made after such adjudication, the same shall be made amongst the creditors of such prisoner whose debts shall be admitted in his or her schedule so sworn to as herein-after directed, and amongst such other creditors (if any) who shall prove their debts in manner aforesaid, in proportion to the amount of the debts so proved, and so admitted and proved respectively, as the case may be : provided always, that if any such Court may prisoner, creditor, or assignee shall object in whole examine

into disputed claims.

or in part to any debt tendered to be so preforesaid, or to any debt mentioned in the schedule of such prisoner, or if any person whose debts are stated in such schedule, but is not admitted to the extent of such demand, shall claim to be admitted as a creditor for the whole of such debt or for more thereof than is so admitted, the objections and claims shall, upon application made, be examined into by the said court or commissioner thereof on his circuit; and the said court or commissioner may, if it shall seem fit, re-examination of the same to an officer of the court, or to an examiner duly appointed in pursuance of this act; and the said court or commissioner such officer or examiner to whom such re-examination shall have been made, shall have full power for the purpose aforesaid to require and compel the production of all books, papers, and writings which be necessary to be produced, as well by the claiming such debt as by such prisoner, or her assignee or assignees, creditor or creditress to examine all such persons and their witness under oath, as the nature of the case may require, to take all other measures necessary for the investigation of such objections and claims; decision of the said court or commissioner upon shall be conclusive with respect to the share of any such creditor or creditors to his, her, or her share of such dividend under the provisions of this act: provided always, that if in any case appear expedient that the proof of any debts should be required to be made at an earlier period than as aforesaid, it shall be made at any time for the said court, by notice as directed in that behalf, to cause all or any of the creditors to prove their debts in such manner as the said court or a commissioner thereof shall direct, and to decide upon such debts, and the receive dividends thereupon, and to do a requisite thereto as aforesaid.

**THE COURT MAY INVESTIGATE ASSIGNNEES' ACCOUNTS.**

LXIII. And be it further enacted, that in case If prisoner such prisoner, or any of his or her creditors, or the or creditor said court, shall at any time be dissatisfied with the account of any such assignee or assignees so rendered upon oath as aforesaid, and it shall appear to the said court that the matters of such account require a fuller or further examination ; or in case any such assignee or assignees shall neglect to render such account, or shall neglect to dispose of the property or collect the effects of such prisoner, or shall in any manner waste or mismanage the estate or effects of such prisoner, or neglect to make a due distribution thereof, it shall be lawful for the said court to require such assignee or assignees to render such account on oath as is directed by this act, if not before rendered, and for the said court or any commissioner thereof on his circuit to examine or further examine any account so rendered, and to inquire into any waste, mismanagement, or neglect of the estate and effects of such prisoner, and, if it shall seem fit, to order that it shall be referred to an officer of the said court, or to an examiner duly appointed in pursuance of this act, to investigate the accounts of such assignee or assignees so rendered as aforesaid, together with all matters brought forward in objection thereto, and to examine into the truth thereof, and to report thereon to the said court or commissioner; and it shall and may be lawful for the said court or commissioner, or such officer or examiner, upon such reference as aforesaid, to require and compel the production of all books, papers, and writings necessary for such purposes, and to summon all parties before him or them, and to examine all parties and their witnesses on oath, as the case may require ; and the said court or commissioner shall and may take all such measures as shall be necessary for the compelling of the rendering of such account and for the due investigation thereof,

*Disposal of Unclaimed Dividends.*

Court may charge assignee with 20 per cent. on money wilfully retained.

and shall have power to disallow any charge, charges in such account which it shall appear to said court or commissioner ought not in fairness be allowed, and to ascertain the produce of estate and effects of any such prisoner to be divided among his or her creditors, and to direct the distribution thereof, and to take all such measures as make such orders as shall be necessary for compelling the proper disposition and distribution thereof, and to award costs against any of the parties to justice shall require; and that if it shall appear to the said court or commissioner, upon any examination of the matters of account, that any such assignee or assignees shall have wilfully retained in their hands, or otherwise employed for their own benefit, any sum or sums of money part of or being the produce of such estate or effect, the said court or commissioner shall have power and authority to order such assignee or assignees to be charged in his or their accounts with the sum of such prisoner with such sum or sums of money as shall be equal to the amount of interest, computed at a rate not exceeding twenty pounds per centum per annum on all sums of money appearing to the said court or commissioner to be so retained or employed by him or them for the time or times during which he or they shall have so retained or employed the same; and the said court shall in pursuance of such order charge such assignee or assignees in his or their accounts with such sum or sums of money accordingly; and the decisions of the said court or commissioner upon all such matters shall be final and conclusive.

**UNCLAIMED DIVIDENDS TO BE PAID INTO COURT**

Assignees to pay unclaimed dividends into court.

LXIV. And be it further enacted, that in cases where any dividend or dividends have remained in the hands of any assignee or assignees for a space of twelve months next following the declaration thereof, such dividend or dividends shall be paid to such assignee or assignees into the said court,

ed to the credit of the proper party or parties  
hat behalf under such estate: provided always,  
t it shall be lawful for the said court or a com-  
missioner thereof at any time, although such twelve  
onths may not have expired, if it shall seem fit, to  
ect that all unpaid and unclaimed dividends, to-  
her with the balance remaining in the hands of  
r assignee or assignees, shall be paid forthwith  
o the said court to the credit of the said estate  
of the particular creditors thereof, as the case  
y be.

**POWER OF COURT TO REMOVE ASSIGNEES, &c.**

XV. And be it further enacted, that in case any  
gnee of the estate and effects of any such pri-  
er so appointed as aforesaid shall be unwilling to  
or in case of the death, incapacity, disability,  
conduct, or absence from the realm of any such  
gnee, or other cause of unfitness appearing to  
said court, it shall be lawful to and for any cre-  
r or creditors of such prisoner to apply to the  
court to appoint a new assignee or assignees  
like powers and authorities as are given by this  
to the assignee or assignees hereinbefore men-  
ted; and that the said court shall have power  
remove such assignees, and to appoint such  
assignee or assignees, and to compel any assig-  
who shall be removed, and the heirs, executors,  
administrators of any deceased assignee, to ac-  
nt for and deliver up to the said court, or as the  
court shall order, all such estate and effects,  
ks, papers, writings, deeds, and other evidences  
ting thereto as shall remain in his or their hands,  
e applied for the purposes of this act; and the  
ision of the said court in the matters aforesaid  
ll be final and conclusive; and from and imme-  
ately after such appointment of a new assignee or  
gnees, and by virtue of the order of the said  
rt in that behalf, all the estate, effects, rights,  
l powers of such prisoner vested in any such for-

Court may  
remove as-  
signees and  
appoint new  
assignees.

*Commitment of Assignees.*

mer assignee or assignees shall become and th  
are hereby vested in such new assignee or at  
without any assignment or conveyance exec  
that behalf; and every such removal and a  
ment shall be entered of record in the said  
and such notice thereof shall be published  
What shall said court shall at any time direct ; and j  
be evidence such removal and appointment so entered of  
of removal as aforesaid shall be received by such certifi  
and ap- thereof as is hereinbefore directed to be reci  
pointment. proof of such order and appointment as a  
made in pursuance of this act.

**POWER OF COURT TO COMMIT ASSIGNEES,**

Court may LXVI. And be it further enacted, that  
commit for any assignee or other person shall disobey :  
refusing to or order of the said court duly made by :  
file accounts court for enforcing the purposes and provi  
and other contempts. this act, or made and entered into by the  
of such assignee or other person for carry  
effect the purposes and provisions of this  
shall and may be lawful for the said court t  
the person so offending to be arrested and co  
as for a contempt of the said court to the p  
the Queen's Bench, or to the common gao  
county, city, or place where he or she shal  
where he or she shall usually reside, there tc  
without bail or mainprize, until such pers  
have fulfilled the duty required by the said  
acts or this act, or until the said court sha  
order to the contrary (t); provided alwa  
nothing herein contained shall authorize a

(t) An application was made to commit a part  
prisoner in the Fleet prison (on civil process from o  
superior courts), to Newgate for contempt of cour  
having filed his schedule in compliance with an ord  
effect, but the court refused it, on the ground, that  
had not given them specific power in such cases; and  
the warden of the Fleet prison might legally resist th  
of the prisoner from his custody to Newgate. *Boar*  
*Legal Guide*, 108, 153, 206.

ioner of the said court, acting out of court, upon summons to commit any person for disobedience of my order of the said court or of any commissioner hereof.

**PROVISIONS CONCERNING ASSIGNEES, &c., TO EXTEND  
TO CASES NOW ON RECORD.**

**LXVII.** And be it further enacted, that all enact- Provisions concerning the appointment and removal of assignees, assignees, and otherwise concerning assignees, and concerning debts and dividends, and the management and tend to control of the estates of insolvent debtors, shall be cases now deemed to extend to all cases which shall be of record. record in the said court for the Relief of Insolvent Debtors at the commencement of this act as well as to cases arising subsequently thereto.

**WHEN COURT MAY DIRECT PROVISIONAL ASSIGNEE  
TO CONVEY.**

**LXVIII.** And whereas it may often happen that some Court may interest in lands and tenements has or may become direct con- veyance by vested in the provisional assignee of the said court for the Relief of Insolvent Debtors which appears to be of no value to creditors, but nevertheless it may be reasonable and expedient that the provisional assignee is assignee should make or join in making some con- veyance or assignment of the same, and that the same should be done without the expense attending advertisements and meetings of creditors, as hereinbefore described in certain cases; be it therefore enacted, that it shall be lawful for the said court, at any time after the day gazetted for the bringing up of any prisoner to be dealt with according to the provisions of this act, if no person or persons other than the said provisional assignee shall have been appointed assignee or assignees of his estate and effects, and if it shall appear fit, upon such notice given by advertisement or otherwise to the creditors, or any of them, as the said court shall in any case

direct, to order the said provisional assignee to or join in making any conveyance of assign any such interest as to the said court may be just and reasonable, without observing the sions of this act as to the sale of real prope the provisional or other assignees of the est insolvent debtors.

#### **PRISONER TO DELIVER IN SCHEDULE OF DEBTS**

After order LXIX. And be it enacted, that every p made, the whose estate shall, by an order to be made prisoner to this act, be vested in the provisional assignee deliver in a schedule of said court for the Relief of Insolvent Debtors debts, pro ther upon his own petition or on the petition property, &c. such creditor as aforesaid), shall, within the s fourteen days next after such order shall have made, or next after notice in writing of such having been made shall have been given to l case such order shall not have been made own petition, or within such further time as t court shall think reasonable, deliver in to t court a schedule containing a full and fair d tion of such prisoner, as to his name or name or trades, profession or professions, togeth the last usual place of abode of such prison the place or places where he has resided du time when his debts were contracted (u); and full and true description (v) of all debts due o

(u) Rule 16, orders, that every application to the leave to file schedule after the expiration of fourt from the filing of the prisoner's petition, or from : file schedule on creditor's petition (as the case may l be supported by the affidavit of the prisoner, in form by the court, in which shall be stated the cause of n filed such schedule in due time; and if the said pris have filed his petition without a special applicatio court, the said affidavit shall also contain such staten cerning the arrest, commitment, and property of the as is required in an affidavit made on application : to file petition.

(v) See *Frampton v. Champneys, post*, 105, n. (v).

ue from such prisoner at the time of making such  
t, and of all and every person and persons to  
n such prisoner shall be indebted, or who to  
knowledge or belief shall claim to be his cre-  
s, together with the nature and amount of such  
s and claims respectively, distinguishing such  
iall be admitted from such as shall be disputed  
uch prisoner; and also a full, true, and perfect  
unt of all the estate and effects of such prisoner,  
and personal, in possession, reversion, remainder,  
xpectancy; and also of all places of benefit or  
ntage held by such prisoner, whether the  
lments of the same arise from fixed salaries  
om fees, or otherwise; and also of all pensions  
llowances of the said prisoner in possession or  
sion, or held by any other person or persons  
r on behalf of the said prisoner, or of and from  
h the said prisoner derives or may derive any  
er of benefit or advantage; and also of all  
ts and powers of any nature and kind whatso-  
which such prisoner, or any other person or  
ons in trust for such prisoner, or for his use,  
fit, or advantage in any manner whatsoever,  
be seized or possessed of, or interested in, or  
led unto, or which such prisoner, or any other  
on or persons in trust for him, or for his benefit,  
have any power to dispose of, charge, or exer-  
for the benefit or advantage of such prisoner;  
ther with a full, true, and perfect account of all  
debts at the time of making such order due or  
ving due to such prisoner, or to any person or  
ons in trust for him, or for his benefit or advan-  
, either solely or jointly with any other person or  
ons, and the names and places of abode of the  
ral persons from whom such debts shall be due  
rowing due, and of the witnesses who can prove  
h debts, so far as such prisoner can set forth the  
e; and the said schedule shall also contain a  
ance sheet of so much of the receipts and expen-  
res of such prisoner, and of the items composing  
same, as shall be at any time required by the

Schedule to  
be filed with  
books and  
papers.

said court in that behalf (*w*) ; and also sha  
and truly describe the wearing apparel, b  
and other necessaries of such prisoner, and  
her family, and the working tools and impl  
of such prisoner, not exceeding in the wh  
value of twenty pounds, which may be exce  
such prisoner from the operation of this act  
ther with the values of such excepted artic  
spectively ; and the said schedule shall be sub  
by such prisoner, and shall forthwith be filed  
said court, together with all books, papers,  
and writings in any way relating to such pr

(*w*) Rule 14, orders, that every prisoner shall  
schedule, file a general balance sheet in form prepare  
court, of his receipts and expenditures, from the da  
earliest debt in his schedule up to the time of sig  
petition, if the prisoner petitioned ; and to the time c  
his schedule, if a creditor petitioned, including all pr  
every kind, with description of the same, which he  
had at any time during that period, together with  
when, persons to whom, and considerations for which  
thereof shall have been disposed of or parted with by  
that in the said general balance sheet, reference may  
for the particulars of any matter, to the special bala  
contained in the schedule ; but that in the schedule,  
may not be made to such general balance sheet ; and  
prisoner shall also state in the said general balance  
cause of his or her present insolvency ; and the a  
debts, if any, still due by him under any prior inso  
bankruptcy.

Rule 15, orders, that every schedule and balance s  
every amendment thereto, shall be read over to the  
by or in the presence of the attorney named in the  
before such prisoner shall sign the same ; and that th  
sheet, and every side of every sheet of the schedule, a  
amendment thereof, shall be signed by the prisoner ;  
signature shall be attested by the said attorney and n  
clerk, and such reading over, signature, and attestati  
be verified by the affidavit of such attorney to be filed  
schedule ; for preparing and swearing which affidavit  
shall be made :—provided, that in case of the illness  
attorney, or of his absence from London or the plac  
he practises, the matters aforesaid, whether concer  
petition or schedule, may be done by some other  
of the court ; in which case, the cause thereof shall b  
in each attestation, and also in such affidavit as afores

effects in his or her possession, or under  
r custody or control(x).

**TO APPOINT TIME AND PLACE FOR HEARING.**

And be it enacted, that the said court for Court to  
of of Insolvent Debtors shall forthwith, after appoint  
edule shall have been filed as aforesaid in time and  
court by any such prisoner, appoint a time place for  
e for such prisoner to be brought up before prisoner to  
rt, or a commissioner thereof on his circuit, be brought  
s of the peace, as hereinafter mentioned, to  
with according to the provisions of this  
and the time so appointed shall in no case

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: provisions of this section are in effect the same as  
Geo. 4, c. 57, s. 40.

, orders, that in all cases there shall be filed with  
le an inventory of the excepted articles, with a va-  
the same respectively; to which shall be added a  
of the appraiser, signed by him; which certificate,  
e by a broker of the court, shall be according to the  
m ordered to be used by them; and in other cases,  
a prescribed by this rule. (See form of Certificate,  
appendix.)

, orders, that all such appraisements in London, or  
miles thereof, shall be made by the brokers of the  
o shall be allowed for completing the same six clear  
tices given from the 28th October to the 1st March,  
clear days on notices given during the rest of the  
they shall have their return ready for delivery to  
er or his attorney, not later than at ten o'clock on  
ng following the days allowed for valuation.

le 18, orders, that every order for hearing by a com-  
on circuit (the circuit appointments having been  
also every order for hearing by justices of the  
ll be ready for delivery at the opening of the office  
ond day (exclusive of Sunday) after the filing of the  
but that the same shall not be issued before that  
in every such case the duplicate of the petition and  
hall be given out with the order for hearing; and  
at of attorney shall be prepared and ready to be  
on the seventh day after the issuing of such order:  
that no order for hearing by a commissioner on cir-  
be issued later than the twenty-eighth day before the  
ed in the Gazette for the attendance of the com-  
; and that no order for hearing by justices of the

Manner of proceeding by commissioner on circuit.

be more than four calendar months after the date of such appointment; and where such prisoner shall be in any gaol within the counties of Middlesex or Surrey, or the city of London, or borough of Southwark, the said court shall order such prisoner to be brought before the said court (z); and where any such prisoner shall be in any other gaol in England or Wales, except in the town of Berwick-upon-Tweed, the said court shall order such prisoner to be brought before one of the Commissioners of the said court proceeding on his circuit at such assize or other town or place within the county or county of a city or town wherein such gaol shall be situate, as may be directed by the order of the said court in that behalf; and where any such prisoner shall be in any gaol within the town of Berwick-upon-Tweed, the said court shall order such prisoner to be brought before the justices of the peace for the said town, in open court, at their general or general quarter sessions of the peace, or at some adjournment thereof (a).

#### NOTICE TO CREDITORS OF HEARING, &c.

Notice to be given to creditors, and advertised.

LXXI. And be it enacted, that the said court for the Relief of Insolvent Debtors shall cause notice of the making every such vesting order as aforesaid, and the filing of every such schedule, and of the time and place so as aforesaid appointed for such prisoner to be brought up, to be given, by such means as the said court shall direct, to the creditor or creditors at whose suit any such prisoner shall be

peace shall be issued later than the twenty-eighth day before the day to be appointed for such hearing. For gazetting the circuit appointments, see *antē*, sec. 32, p. 37.

(z) An insolvent who had petitioned the court and was afterwards released on bail, was before hearing discharged by his detaining creditor; the court held, that as the discharge was lodged when he was out of custody, he could not be heard on his petition. *Henry Whiteman's case*, 3 Legal Guide, 27.

(a) See *post*, note (b), p. 81.

detained in custody, or the attorney or agent of such creditor or creditors, and to the other creditors named in the schedule of such prisoner, and resident within the United Kingdom, and whose debts shall amount to the sum of five pounds, and to be inserted in the London Gazette, and also, if the said court shall think fit, in the Edinburgh and Dublin Gazettes, or either of them, and also in such other newspaper or newspapers as the said court shall direct (b).

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(b) Rule 20, orders, that henceforth notice of the making of the vesting order, and filing of schedule, and of the time and place appointed for the prisoner to be brought up, shall be given to creditors and persons claiming to be creditors, whether such debts are admitted or disputed in the schedule, in the following manner:—

1st. In all cases by personal service of a copy of the order for hearing, made twenty-one days at least before the day of hearing, upon every detaining creditor, and every creditor for five pounds or more, resident or carrying on business in London, or within ten miles thereof: also upon the attorney or agent (resident as aforesaid) of every detaining creditor suing by attorney.

N.B. Delivery of the said copy to the wife, son, daughter, clerk, or servant of the party, at the usual place of abode or business of such party; or where the party is assignee of a bankrupt, to the solicitor of such assignee, or his clerk, or servant, at the usual place of business of such solicitor, shall be deemed equivalent to personal service.

2nd. In all cases, by sending twenty-three days at least before the day of hearing, a copy of the order for hearing by the general post, rightly and methodically addressed, and with the proper post town thereon, to every detaining creditor and every creditor for five pounds or more, resident in England elsewhere than as above-mentioned, or in Scotland or Ireland; and to the attorney or agent (resident more than ten miles from London) of every detaining creditor suing by attorney; or by such personal service as is above-mentioned made upon any such creditor or attorney. Letters to the attorneys or agents of detaining creditors, and to detaining creditors suing in person, must be post paid. It is not required that notice should in any case be given both to the attorney and agent.

N.B. Where the sheriff has failed to communicate a detainer to the gaoler before the issuing of the order for hearing, the plaintiff in such case will not be deemed a detaining creditor within the above rule.

**PROCEEDINGS AT THE HEARING.**

At the time LXXII. And be it enacted, that upon such p  
of hearing, sooner being brought up as aforesaid, the said co

3rd. In all cases, by advertisement published in the London Gazette twenty-one days at least before the day of hearing.

4th. In cases where the prisoner is described in the schedule as having resided in Scotland or Ireland, also in cases where four or more of the creditors of the prisoner are residents in Scotland or Ireland, by advertisement published twenty-one days at least before the day of hearing, in the Edinburgh or Dublin Gazette, as the case may be.

5th. In all cases where the prisoner is described in the schedule, as having resided in some county in England other than London, Middlesex, and Surrey, by advertisement published eighteen days at least before the day of hearing in some newspaper usually circulated in the neighbourhood of the prisoner's last usual place of residence in such county. This rule applies to each such county, if more than one in the description.

6th. In cases to be heard by a commissioner on circuit, or by justices in Berwick-upon-Tweed, by advertisement published eighteen days at least before the day of hearing in some newspaper most usually circulated in the county or place where the case is ordered to be heard.

7th. In every case to be heard by a commissioner on circuit, or by justices, of a prisoner removed under the act 7 Geo. 4, c. 57, s. 65; or the act 1 and 2 Vict. c. 110, s. 94; or by the court, of a prisoner whom his creditor, after order obtained, has failed to remove, notice of the hearing shall be given by advertisement published ten days at least before the day of hearing in the London Gazette; and also, where on an original hearing notice in any newspaper in England would be required, by advertisement published in such newspaper seven days at least before the day of hearing; and also by service of the order for hearing, seven days at least before the day of hearing, upon all detaining creditors, and all creditors (if any) who entered notice of opposition for the former hearing: unless in any case the court shall otherwise direct by special order concerning the notice in such case. (See post, s. 94, note (w), p. 105; and see note (x), p. 106.)

8th. Where at the hearing notices shall appear to have been served on any creditor not in sufficient time, and any other or further hearing of the case shall be appointed for that or any other cause at a subsequent time, notice of such last-mentioned appointment shall be given to the said creditor in such time as will, together with the time of giving the former notice, com-

missioner or justices shall examine into the the sche-  
of every such prisoner so brought before  
dule to be  
examined.

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regular period of twenty-one or twenty-three days,  
as may be ; which being done, such creditor shall be  
have had due notice : provided, that such second  
all in no case be effectual, if served less than seven  
the day of hearing in cases requiring personal ser-  
vive days in cases of services by the post ; nor unless  
her shall consent to waive notice of opposition to be  
ach hearing : and that notice for the original hearing  
vise be of no effect, if served less than seven and  
in such cases respectively.

here the service has been defective, and the creditor  
ar against the prisoner at the hearing, he shall be  
have had due notice, unless the court, commis-  
justices shall otherwise direct.

, orders, that services shall be made, and that proof  
shall be given, and affidavits be made and filed in  
llowing :—

proof shall be required at the hearing of advertise-  
he London Gazette, which is ordered to be inserted  
the officer of the court, and by no other person.  
oof of all advertisements shall be made by produc-  
Gazette or newspaper in which the same were pub-

oof of all services, whether personal or by post, shall  
y affidavit, to the satisfaction of the court, commis-  
justices.

personal services in London, and within ten miles  
all be made by messengers of the court, who shall  
avit of the same. The copies of orders for hearing  
ed, duly addressed, and numbered according to the  
the schedule, must be delivered to them three clear  
least (exclusive of Sunday) before the last day of  
cases for original hearing, and one clear day at the  
usive of Sunday) before the last day of service,  
r adjourned hearing ; and at the same time shall be  
he original order for hearing, together with a  
plicate of persons to be served, the entries in  
shall correspond with the directions written on the

services by the post shall be made by messengers  
rt, who shall make affidavit of the same. The  
led, addressed, and numbered according to the  
the schedule, must be delivered to them one day  
ore the last day of service, together with a list in  
separate from the lists for personal service), the

*Opposition by Creditors.*

**Creditors may oppose prisoner's discharge.** the said court, commissioner, or justices, upon the oath of such prisoner, and of such parties and other witnesses as the said court, or commissioner, or justices shall think fit to examine thereupon ; and in case such notice as the said court shall direct shall have been given by any creditor of his intention to oppose such prisoner's discharge (c), it shall be

entries in which shall correspond with the directions on the letters.

6th. In cases to be heard by the court, all such affidavits and advertisements as aforesaid (excepting those in the London Gazette), shall be filed at the office, eight days at least before the day of hearing in original cases, and two clear days at least (exclusive of Sunday) before the day of hearing in adjourned cases.

7th. In cases to be heard on circuit, all such affidavits and advertisements as aforesaid (excepting those in the London Gazette), shall be lodged between the hours of twelve and four, two days before the day notified in the London Gazette for the attendance of the commissioner ; and in cases to be heard by justices at Berwick, between the same hours, two days before the day of hearing, at the office of the clerk of the peace, or his approved deputy, or other person appointed for that purpose by the court, according to the act 1 & 2 Vict. c. 110, sec. 106, in the town or place at which such attendance, or hearing aforesaid, is appointed. (See sec. 106, *post*, p. 120.)

(c) Rule 22, orders, that notice of intention to oppose a prisoner's discharge be given in manner following :—

1st. In cases to be heard by the court, by entry made in the proper page and columns of the book kept for that purpose at the office of the court, between the hours of ten in the forenoon and four in the afternoon, three clear days before the day of hearing, exclusive of Sunday, and exclusive both of the day of entering such notice, and of the day of hearing.

*N. B.* Entrance to the office in Portugal-street, Lincoln's-inn fields.

2nd. In cases to be heard by a commissioner or justices, by giving a notice of such intention in writing to the prisoner, three clear days before the day of hearing, exclusive of Sunday, and exclusive both of the day of giving such notice, and of the day of hearing.

3rd. In cases of hearing, after removal or failure of removal, notice of opposition shall be given in manner aforesaid, one clear day before the day of hearing ; unless where such notice was given for the original hearing, or where the prisoner may waive the same on giving short notice of the hearing. (*See ante*, rule 20, pl. 8, p. 82.)

wful, both for the said creditor and any other of  
e creditors of such prisoner, and notwithstanding  
ch creditor or creditors may have petitioned for  
d obtained such vesting order as aforesaid, to op-  
ne such prisoner's discharge, and for that purpose  
put such questions to such prisoner, and examine  
ch witnesses as the said court, or commissioner,  
: justices shall think fit, touching the matters con-  
ned in such schedule, and touching such other  
atters as the said court, or commissioner, or jus-  
ces shall be of opinion that it may be fit and pro-  
r to inquire into, in order to the due execution of  
is act: but no creditor shall examine or oppose  
e discharge of such prisoner until he shall make  
uth or affidavit of his debt, or otherwise give satis-  
tory proof of his right to oppose such prisoner's  
charge(d), if required so to do by such prisoner;  
d that in case the said court, or commissioner, or Hearing  
stices shall entertain any doubt touching any mat- may be  
r alleged against such prisoner at such hearing, to adjourned.  
event his or her discharge, or otherwise touching  
e schedule or the examination of such prisoner,  
it shall appear that amendment is necessary to be  
ade of such schedule, or in case such prisoner shall  
fuse to be sworn, or shall not answer upon oath to  
e satisfaction of the said court or commissioner or  
stices, it shall be lawful for the said court, or com-  
missioner, or justices to adjourn the hearing and  
amination of such prisoner, and of witnesses there-  
pon, to some future sitting of the said court, or  
ommisioner, or justices, or to some future circuit to  
e made by one of the said commissioners, or to some  
ture general orgeneral quarter or adjourned sessions,  
s the case may be; and in every such case, such  
sioner shall upon such adjournment remain in cus-  
ody, and shall and may be again brought up, and

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(d) An attorney will not be allowed to oppose the discharge  
of an insolvent for the amount of a bill of costs he had ne-  
glected to deliver before the hearing. *In re Schultz*, 3 Legal  
Guide, 72; and see rule 3, note (f), sec. 114, *post*, p. 128.

*Affidavits opposing Discharge.*

such hearing and examination be further proceeded in, as often as to the said court, or commissioner, justices shall seem fit: provided always, that where any such hearing shall be adjourned by the said court generally, or by such commissioner or justices to some future circuit, or to some future sessions aforesaid, the said court shall and may, upon the application of such prisoner, to be made within such time as the said court shall direct, order the said prisoner to be brought up for hearing accordingly, and such notice thereof shall be given, and to such parties, as the said court, or commissioner, or justices shall direct.

**AFFIDAVITS RECEIVABLE IN OPPOSITION TO DISCHARGE.**

**Affidavits  
may be re-  
ceived in  
opposition  
to prison-  
er's dis-  
charge in  
certain  
cases.**

LXXIII. Provided always, and be it further enacted, that where any prisoner, whose usual place of abode at or lately before his or her imprisonment was otherwise than in Middlesex, Surrey, London, or Southwark aforesaid, shall be so brought before the said court for the Relief of Insolvent Debtors, it shall be lawful for the said court to receive the affidavits of any creditor or creditors or other person or persons not resident within Middlesex, Surrey, London, or Southwark aforesaid, in opposition to the discharge of such prisoner under this act, and also, if such court shall think fit to permit interrogatories to be filed for the examination or cross-examination of any person making or joining in such affidavits, and to adjourn the hearing and examination of such prisoner until such interrogatories shall be fully answered to the satisfaction of the said court; and where any prisoner shall be brought before any commissioner of the said court on his circuit or before any such justices as aforesaid, at their sessions aforesaid, and the usual place of abode of such prisoner at or lately before his or her imprisonment shall have been other than in the county or riding where such prisoner shall be brought up, it shall be lawful for such commissioner or justices to receive the affidavits of any creditor or creditors, or other person or

persons not resident within the county or riding where such prisoner shall be brought up, in opposition to the discharge of such prisoner under this act, and also, if such commissioner or justices shall think fit, to permit interrogatories to be filed for the examination or cross-examination of any person making or joining in such affidavits, and to adjourn the hearing and examination of such prisoner until such interrogatories shall be fully answered to the satisfaction of the said commissioner or justices.

**REFERRING PRISONER'S SCHEDULE, &c., TO AN OFFICER.**

LXXIV. Provided always, and it is hereby Schedule enacted, that at such hearing or adjourned hearing, and pri- it shall be lawful for the said court or commissioner soner's ac- or justices, if it shall appear fit, upon application counts may made by some creditor or creditors, and supported be referred by oath or affidavit, to order that it shall be referred to an officer of the said court, or to an examiner to an officer duly appointed according to the provisions of this court, or an act, to investigate the accounts of such prisoner, order pri- and to examine into the truth of his schedule, and sooner to soner to report thereon to the said court or commissioner or attend. justices (e); and that the said court or commissioner or justices may at such hearing proceed on other matters in opposition to the discharge of such pri- soner, or may, if it shall appear just and reasonable so to do, forthwith adjourn the hearing thereof until such officer or examiner shall have made his report (f); and that upon such reference being made as aforesaid it shall be lawful for such officer or ex- aminer to order the attendance of such prisoner as

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(e) Rule 29, orders, that after a case has been numbered, in all applications made to the court, whether in court or in the office, the motion paper, petition, or other document by which the application is made, shall be marked with the number of the case, and T. or C. as it may be; and that every order, &c., delivered from the office, shall be marked in like manner.

(f) Rule 28, orders, that any party desiring an examination

*Expense of Reference.—Prisoner's Discharge.*

often as such officer or examiner shall think fit, and the prisoner mentioned in such order shall be accordingly carried before such officer or examiner, for which such order shall be a sufficient warrant; and the keeper of the prison, or his deputy, so carrying any prisoner before such officer or examiner, shall receive for the same the sum of ten shillings, and no more, to be paid by the person or persons at whose requisition

**Officer and the said reference shall have been had ; and such examiner may administer oaths.** officer or examiner shall and may under such reference, administer oaths, and examine all witnesses and parties upon their oaths, touching all matters relating thereto : provided always, that no keeper of any prison shall be required or compelled to carry any prisoner a greater distance than two miles from his prison to or before such officer or examiner, except that the keepers of prisons in Middlesex and

London, and of the prisons of the Queen's Bench and Marshalsea, and in Horsemonger Lane, and of and in the borough of Southwark, shall carry their prisoners before such officer at the said court, or at such other place within the bills of mortality as the

**Court may order expenses of reference to be paid out of insolvent's estate.** said court shall direct ; and that in all cases where such reference shall have been made as aforesaid, it shall be lawful for the said court or commissioner or justices, if just cause shall appear, to order all the fees and expenses of such reference paid by any creditor or creditors to be repaid to him, her, or them out of the first money received by the provisional or other assignee or assignees of such prisoner from or by his estate or effects.

**POWER OF COURT TO DISCHARGE PRISONER.**

**Court, &c., may adjudge prisoner to be** LXXV. And be it enacted, that after such examination of any such prisoner as hereinbefore directed, it shall be lawful at such hearing or adjourned hear-

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and report upon the documentary proofs of debts satisfied, or other such matters, shall deliver his vouchers and request to the clerk of the rules, who will thereupon fill up a rule of reference, and forward the same to the examining officer.

ng as aforesaid, for the said court or commissioner discharged & justices, upon such prisoner's swearing to the from cust-  
ruth of his schedule, and executing such warrant of tody, and attorney as is hereinafter directed, to adjudge that entitled to  
uch prisoner shall be discharged from custody, and of this act.  
entitled to the benefit of this act, at such time as  
he said court or commissioner or justices shall di-  
rect, in pursuance of the provisions hereinafter con-  
tained in that behalf, as to the several debts and  
sums of money due or claimed to be due at the time  
of making such vesting order as aforesaid, from such  
prisoner to the several persons named in his schedule  
as creditors, or claiming to be creditors, for the  
same respectively, or for which such persons shall  
have given credit to such prisoner before the time  
of making such vesting order as aforesaid, and which  
were not then payable, and as to the claims of all  
other persons not known to such prisoner at the  
time of such adjudication, who may be endorsees or  
holders of any negotiable security set forth in such  
schedule so sworn to as aforesaid.

**POWER TO DETAIN PRISONER SIX MONTHS.**

LXXVI. And be it enacted, that in all cases Court may where no cause shall appear to the contrary, it shall adjudge be lawful for the said court or commissioner or jus- discharge,  
tices, according as shall seem fit, to adjudge that such &c., to be  
prisoner shall be so discharged, and so entitled as or not later forthwith,  
aforesaid, forthwith, or so soon as such prisoner than six  
shall have been in custody at the suit of one or more months  
of the persons as to whose debts and claims such from the  
discharge is so adjudicated, for such period or filing of the  
periods, not exceeding six months in the whole, as petition.  
the said court or commissioner or justices shall di-  
rect, to be computed from the making of such vest-  
ing order as aforesaid.

**POWER TO DETAIN PRISONER THREE YEARS.**

LXXVII. And be it enacted, that in case it shall In certain  
appear to the said court or commissioner or justices cases dis-

charge, &c., that such prisoner has fraudulently, with intent to be at any period not later than three years from petitioning.

charge, &c., that such prisoner has fraudulently, with intent to conceal the state of his affairs, or to defeat the objects of this act, destroyed or otherwise wilfully prevented or purposely withheld the production of any books, papers, or writings relating to such of his affairs as are subject to investigation under this act, or kept, or caused to be kept false books, or made false entries in, or withheld entries from, or wilfully altered or falsified, any such books, papers, or writings, or that such prisoner has fraudulently, with intent of diminishing the sum to be divided among his creditors, or of giving an undue preference to any of the said creditors, discharged or concealed any debt due to or from the said prisoner, or made away with, charged, mortgaged, or concealed any part of his property, of what kind soever, either before or after the commencement of his or her imprisonment, then it shall be lawful for the said court or commissioner or justices to adjudge that such prisoner shall be so discharged, and so entitled as aforesaid, so soon as he shall have been in custody at the suit of some one or more of the persons, as to whose debts and claims such discharge is so adjudicated, for such period or periods, not exceeding three years in the whole, as the said court or commissioner or justices shall direct, to be computed as aforesaid (g).

#### POWER TO DETAIN PRISONER TWO YEARS.

In other cases the discharge, &c., to be at any period not later than two years from petitioning.

LXXVIII. And be it enacted, that in case it shall appear to the said court or commissioner or justices, that such prisoner shall have contracted any of his or her debts fraudulently, or by means of a breach of trust, or by means of false pretences, or without having had any reasonable or probable expectation at the time when contracted of paying the same, or shall have fraudulently, or by means of false pre-

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(g) Where an insolvent who has been some time out on bail is remanded at the hearing, such time during which he was so out on bail is excluded from the judgment of the court. *In re Johnson and Harris*, 3 Legal Guide, 45.

tences, obtained the forbearance of any of his debts, by any of his creditors, or shall have put any of his creditors to any unnecessary expense by any vexatious or frivolous defence or delay to any suit for recovering any debt or sum of money due from such prisoner, or shall be indebted for damages recovered in any action for criminal conversation with the wife, or for seducing the daughter or servant of the plaintiff in such action, or for breach of promise of marriage made to the plaintiff in such action, or for damages recovered in any action for a malicious prosecution, or for a libel, or for slander, or in any other action for a malicious injury done to the plaintiff therein, or in any action of tort or trespass to the person or property of the plaintiff therein, where it shall appear to the satisfaction of the said court that the injury complained of was malicious, then it shall be lawful for such court or commissioner or justices to adjudge that such prisoner shall be so discharged, and so entitled as aforesaid, forthwith, except as to such debt or debts, sum or sums of money, or damages as above-mentioned ; and as to such debt or debts, sum or sums of money, or damages, to adjudge that such prisoner shall be so discharged, and so entitled as aforesaid, so soon as he shall have been in custody, at the suit of the person or persons who shall be creditor or creditors for the same respectively, for a period or periods not exceeding two years in the whole, as the said court or commissioner or justices shall direct, to be computed as aforesaid.

**EFFECT OF PRISONER'S DISCHARGE AS TO HIMSELF  
AND CREDITORS.**

LXXIX. And be it enacted, that the discharge of Discharge any prisoner so adjudicated as aforesaid, shall and may extend may extend to all process issuing from any court, for to process any contempt of any court, ecclesiastical or civil, for contemp in for nonpayment of money or of costs or expenses in nonpay any court, ecclesiastical or civil ; and that in such case the said discharge shall be deemed to extend money ;

*Effect of Discharge.*

also to all costs which such prisoner would be liable to pay in consequence or by reason of such contempt, or on purging the same (*h*) ; and that every and to costs incurred by creditor, but subject to taxation (*i*). discharge so adjudicated as aforesaid, as to any debt or damages of any creditor of such prisoner, shall be deemed to extend also to all costs incurred by such creditor before the filing of such prisoner's schedule, in any action or suit brought by such creditor against such prisoner for the recovery of the same ; and that all persons as to whose demands for any such costs, money, or expenses as aforesaid any such person shall be so adjudged to be discharged, shall be deemed and taken to be creditors of such prisoner in respect thereof, and entitled to the benefit of all the provisions made for creditors by this act, subject nevertheless to such ascertaining of the amount of the said demands as may be had by taxation or otherwise, and to such examination thereof as is herein provided in respect of all claims to a dividend of such insolvent's estate and effects.

**DISCHARGE MAY EXTEND TO ANNUITIES.**

Discharge may extend to sums payable by way of annuity, &c. (*j*).

LXXX. And be it enacted, that the discharge of any such prisoner so adjudicated as aforesaid, shall and may extend to any sum and sums of money which shall be payable, by way of annuity or otherwise, at any future time or times, by virtue of any bond, covenant, or other securities of any nature

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(*A*) A defendant in an action for *crim. con.* was outlawed for nonpayment of costs and damages ; upon his being taken on the *capias utlagatum* he petitioned the Insolvent court for his discharge, and the court adjudged him to be entitled to it, after he had suffered four months' imprisonment ; a prohibition was applied for to prevent the order being carried into effect, on the ground that an outlaw could not be heard in any court otherwise than to reverse his outlawry : but the court of Q. B. held, that by the terms of the 7 Geo. 4, c. 57, s. 50, the Insolvent court had power to make the order. *Reg. v. the Commissioners of the Insolvent Debtors court, in re Hanlin*, 1 Will. & Hedges, 502.

This section is similar to the 7 Geo. 4, c. 57, s. 50.

This section is similar in its provisions to 7 Geo. 4, c. 57,

whatsoever (*k*), and that every person and persons who would be a creditor or creditors of such prisoner for such sum or sums of money, if the same were presently due, shall be admissible as a creditor or creditors of such prisoner for the value of such sum or sums of money so payable as aforesaid, which value the said court shall, upon application at any time made in that behalf, ascertain, regard being had to the original price given for such sum or sums of money, deducting therefrom such diminution in the value thereof as shall have been caused by the lapse of time since the grant thereof to the time of making such vesting order as aforesaid; and such creditor or creditors shall be entitled in respect of such value to the benefit of all the provisions made for creditors by this act, without prejudice nevertheless to the respective securities of such creditor or creditors, excepting as respects such prisoner's discharge under this act (*l*).

**POWER OF COURT AS TO IMPRISONMENT.**

LXXXI. And be it enacted, that in all such cases, where it shall be adjudged that any such prisoner shall be so discharged and so entitled as aforesaid

Court, &c.,  
may order  
prisoner to  
be confined

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(*k*) An insolvent is not by his discharge released from an action at the suit of his surety, for money paid after such discharge in respect of an annuity due by the insolvent before. *Abbott v. Bruere*, 5 Bing. N. C. 598; 7 Scott, 753, S. C., and see the cases there cited; *Powell v. Eason*, 8 Bing, 23; *Hocken v. Brown*, 4 Bing. N. C. 400.

(*l*) A. and B. agreed to purchase of F., his business of an attorney, for which they were to pay down a given sum at the execution of the indenture, and a further sum of the like amount at a future day, with power to abandon the contract within a year and a half upon giving a month's notice to F., in which case, he was to repay A. and B., 50*l*. Before the expiration of the time specified, F. took the benefit of the Insolvent Debtors' Act, and afterwards, and within the year and a half, A. and B. gave notice of abandonment, and sued for the fifty pounds: held, that F.'s discharge was no bar to the action. *Brown and another v. Fleetwood*, 7 Dowl. P. C. 387; 5 Mee. & Wels. 19. See *contra*, *Lawrence v. Walker*, 3 Dowl. P. C. 614.

within the walls of the prison at some future period, it shall be lawful for the said court or commissioner or justices, if it shall seem fit, to direct that such prisoner shall be confined during any such period within the walls of the prison, and not within any rules or liberties thereof (m).

#### COSTS OF OPPOSITION.

**Court, &c., may order costs, in certain cases, to be paid to opposing creditors out of insolvent's estate.** LXXXII. And be it enacted, that whenever any creditor or creditors opposing any such prisoner's discharge, shall prove to the satisfaction of the said court or commissioner or justices that such prisoner has done or committed any act for which, upon such adjudication as aforesaid, he may be liable to remain in such custody as aforesaid for a period not exceeding three years, to be computed as aforesaid, the said court or commissioner or justices shall adjudge the taxed costs of such opposition to be paid to such opposing creditor or creditors out of the estate and effects of such prisoner, by his or her assignee or assignees, before any dividend made thereof; and in all other cases of opposition to a prisoner's discharge being substantiated or effectual, it shall be lawful for the said court or commissioner or justices to adjudge in like manner, if it shall seem fit; and that in case it shall appear to the said court or commissioner or justices that the opposition of any creditor to any such prisoner's discharge was frivolous and vexatious, it shall be lawful for the said court or commissioner or justices to award such costs to such prisoner as shall appear to be just and reasonable, to be paid by the creditor or creditors making such opposition, which shall be paid accordingly.

**Where opposition frivolous and vexatious, costs may be awarded to prisoner.**

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(m) The court will, however, in the case of a prisoner's illness, and on a surgeon's affidavit of that fact, allow him to reside within the rules for a limited period. *In re Salmon*, 1 Legal Guide, 346.

**PROCEEDINGS OF COMMISSIONERS AND JUSTICES ON  
ADJUDICATION.**

LXXXIII. And be it enacted, that where, upon Court or any prisoner being brought up before the said court, or a commissioner thereof on his circuit, any such adjudication shall have been made as aforesaid by the said court or commissioner, order shall be made accordingly by the said court or commissioner, in pursuance of such adjudication, and the said court or commissioner shall also issue a warrant or warrants to the gaoler accordingly, ordering the discharge of such prisoner from custody as to the detainers under which he or she shall then be confined, or which shall be lodged against him or her before he or she shall be out of custody, the same being for debts in respect of which such adjudication shall have been made; and where, upon any such prisoner being brought up before such justices as aforesaid, any such adjudication as aforesaid shall have been made by such justices, the said justices shall forthwith certify such adjudication to the said court, whereupon the said court shall order that such prisoner shall be discharged from custody and entitled to the benefit of this act, according to such adjudication, at the period or periods expressed therein, and shall order such costs to be paid as shall have been adjudged by the said justices in pursuance of the provisions of this act, and shall issue a warrant or warrants to the gaoler accordingly, ordering the discharge of such prisoner from custody as to the detainers under which he shall then be confined, or which shall be lodged against him before he shall be out of custody, the same being for debts in respect of which such adjudication shall have been made; and that every such order of adjudication shall take effect as from the day on which the adjudication shall have been made in that behalf; and that every such adjudication, and certificate thereof, and order thereupon, may be made without specifying therein any such debt or debts, or sum not necessary to make order, pursuant to adjudication, and issue warrant to gaoler.

Specification of debts, &c.,

sary in  
order of ad-  
judication.

*Order on Adjudication.—Conditional Adjudication*

or sums of money, or claims as aforesaid, or namethin  
therein any such creditor or creditors as aforesaid,  
excepting so far as shall be necessary in any case  
in order to distinguish between the creditors and  
whom any such prisoner may be adjudged to be  
discharged and entitled as aforesaid forthwith,  
the creditors as to whom he may be adjudged to be  
so discharged and entitled at some future period  
provided nevertheless, that in all cases the debt  
or detainers with respect to which any such prisoner  
shall have been adjudged to be discharged or  
in custody, he being then in custody thereupon, shall  
be specified in the warrant of the said court or  
commissioner, to be delivered to the gaoler in the  
behalf.

**WHEN ADJUDICATION CONDITIONAL.**

Adjudica-  
tion may be  
conditional  
in certain  
cases.

LXXXIV. And be it enacted, that where it shall appear to the said court, commissioner, or justices of any such hearing as aforesaid of any such prisoner that certain matters or things ought to be performed by or on behalf of such prisoner before he intended to be actually discharged from custody, that nevertheless it is expedient not to adjourn the hearing of the case absolutely to some future occasion, without the opportunity of such discharge being sooner had by doing such things as aforesaid, shall be lawful for the said court, commissioner, justices to pronounce adjudication without issuing the order and warrant pursuant thereto; and that such adjudication may be directed to be conditional on the performance of such matters as aforesaid; and that on the nonperformance thereof the hearing of such case shall stand adjourned, according to the direction made in their behalf.

**POWER TO ISSUE DETAINER AGAINST REMANDED  
INSOLVENT.**

Where ad-  
judication

LXXXV. Provided always, and be it enacted  
that in all cases where it shall have been adjudic

that any such prisoner shall be so discharged, and is a dis-  
so entitled as aforesaid, at some future period, such charge at a  
prisoner shall be subject and liable to be detained in future  
prison, and to be arrested and charged in custody period, the  
at the suit of any one or more of his or her creditors prisoner  
with respect to whom it shall have been so adjudged, may be de-  
at any time before such period shall have arrived, in tained or  
the same manner as he would have been subject and arrested,  
liable thereto if this act had not passed (o) : &c., till that period ar-  
provided nevertheless, that when such period shall have rives (n).  
arrived, such prisoner shall be entitled to the benefit  
and protection of this act, notwithstanding that he  
may have been out of actual custody during all or  
any part of the time subsequent to such adjudication  
by reason of such prisoner not having been arrested  
or detained during such time or any part thereof (p).

**WEEKLY PAYMENT BY DETAINING CREDITOR TO  
PRISONER.**

**LXXXVI.** And be it enacted, that in all cases Court may where such prisoner shall, upon such adjudication order de-  
as aforesaid, be liable to further imprisonment at the taining  
suit of his creditor or creditors, or any or either of creditor to  
them, it shall be lawful at any time for the said pay pri-  
court, on the application of such prisoner, to order soner a sum not  
the creditor or creditors at whose suit he shall be so exceeding  
imprisoned, to pay to such prisoner such sum or 4s. a week.  
sums of money, not exceeding the rate of four shil-  
lings by the week in the whole, at such times and  
in such manner and in such proportions as the said

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(n) This section is similar to the 7 Geo. 4, c. 57, s. 55.

(o) By this section the case of a remanded insolvent is taken entirely out of the operation of the act, and therefore a writ of *detainer* may be lodged against him as heretofore, and no writ of summons need be first sued out, nor any application made for a judge's order, as provided for by the third section. *Tunnor v. Darnell*, 7 Dowl. P. C. 346; 5 Mee. & Wels. 28, S.C.

(p) Where a detainer was lodged against a prisoner under the 7 Geo. 4, c. 57, s. 55, plaintiff was not bound to declare within the time limited by the rule of Trinity Term, 3 Wm. 4. *Buzzard v. Bousfield*, 7 Dowl. P. C. 1; 1 Horn. & Hurl. 336, S. C.

*Warrant of Attorney before Adjudication.*

court shall direct, and that on failure of payment thereof, as directed by the said court, the said court shall order such prisoner to be forthwith discharged from custody at the suit of the creditor or credit so failing to pay the same.

**EXECUTION OF WARRANT OF ATTORNEY BEFORE ADJUDICATION.**

Before adjudication,  
prisoner  
shall  
execute  
warrant  
of attorney  
to confess  
judgment  
for amount  
of debts in  
schedule.

LXXXVII. And be it enacted, that before such adjudication shall be made with respect to such prisoner, the said court or commissioner or justices shall require such prisoner to execute a warrant of attorney to authorize the entering up of judgment against such prisoner in some one of the superior courts at Westminster, in the name of the assignee or assignees of such prisoner, or of the provisional assignee, if no other assignee shall have been appointed and shall have accepted such office for the amount of the debts stated in the schedule of such prisoner so sworn to as aforesaid to be due or claimed to be due from such prisoner, or so much thereof as shall appear at the time of executing such warrant of attorney to be due and unsatisfied; and any such warrant of attorney is hereby declared not to be within the meaning of the said Act passed in the third year of the reign of his late Majesty King George the Fourth, nor shall it be necessary that the same should be executed in the presence of the attorney for such prisoner according to the provision hereinbefore in that behalf contained; and the order of the said court for entering up such judgment shall be a sufficient authority to the proper officer for entering up the same, and such judgment shall have the force of a recognizance; and at any time it shall appear to the satisfaction of the said court that such prisoner is of ability to pay such debts or any part thereof, or that he is desirous of leaving assets for that purpose, the said court may permit execution to be taken out upon such judgment, for such sum of money as under all the circumstances of the case the said court shall order.

Court may  
permit ex-  
ecution to  
be taken  
out there-  
upon, when  
insolvent  
is of ability  
to pay, or

such sum to be distributed rateably amongst the executors of such prisoner according to the mode leaving assets. before directed in the case of a dividend made after adjudication; and such further proceedings shall and may be had upon such judgment as may seem fit to the discretion of the said court from time to time, until the whole of the debts due to the several persons against whom such discharge shall have been obtained shall be fully paid and satisfied, together with such costs as the said court shall think fit to award; and no scire facias shall be necessary No scire facias necessary, but execution shall at all times issue thereon by virtue of the order of the said court: provided always that in case any such application against any such prisoner shall appear to the said court to be founded and vexatious, it shall be lawful for the said court, not only to refuse to make any order on such application, but also to dismiss the same, with the same costs against the party or parties making the same as to the said court shall appear reasonable, and the said costs shall be paid accordingly.

If application is ill-founded and vexatious, court may dismiss with costs.

#### HOW ASSIGNEES MAY OBTAIN FUTURE PROPERTY OF INSOLVENT.

LXXXVIII. And be it enacted, that in case any person shall, after he has become entitled to the benefit of this act by any such adjudication as shall after bresaid, become entitled to or possessed of, in his right, any stock in the public funds of this country, or other property, whether the same be in England or elsewhere, which by law cannot be taken into execution under the said judgment so to be entered up in the names of such assignee or signees as aforesaid, and such prisoner shall have refused to convey or assign or transfer such stock or other property, or so much thereof as may be sufficient to satisfy the said judgment, then and in such case it shall be lawful for the assignee or signees of such prisoner to apply by petition in a

summary way (*q*), setting forth the facts of the case to the said court, and to pray that the said prisoner may be taken and committed to custody notwithstanding any such adjudication and discharge aforesaid; and thereupon, if upon examination by said court, and hearing as well the said assignee or assignees as the said prisoner, in case he shall appear, or the said assignee or assignees only, in case such prisoner, due notice having been given to him, shall not appear, it shall appear to the said court that the contents of such petition are true, then and in such case the said court shall so declare and adjudicate and shall thereupon order (*r*) the said prisoner to be apprehended, and committed to custody within the walls of any prison which the said court shall direct and not within any rules or liberties thereof, until he shall convey, assign, and transfer such stock or other property, or so much thereof as the said court shall direct, towards the satisfaction of the said judgment, to such assignee or assignees for the general benefit of the creditors of such prisoner.

Court may order prisoner to be remanded to custody until he transfers such property.

#### HOW TO OBTAIN AFTER-ACQUIRED PROPERTY IN POSSESSION OF OTHERS.

Manner of proceeding where, after the discharge of a prisoner, any person shall be possessed of stock in public funds, &c., belonging to him.

LXXXIX. And be it enacted, that in case an person or persons, body politic or corporate, shall after any such insolvent shall have become entitled to the benefit of this act by any such adjudication aforesaid, become or be possessed of, or have under his or their power or control, any stock in the public funds of this country, or any legacy, money due or growing due, bills of exchange, promissory note bank notes, securities for money, goods, and chattels, or any other property whatsoever belonging to such insolvent, or held in trust for him, or for his use and benefit, or to which such insolvent shall in any way entitled, or in case any such person

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(*q*) See rule 29, *ante*, p. 87.

(*r*) *Ibid.*

Persons, body politic or corporate, shall be at such period in any manner indebted to such insolvent, it shall be lawful for the said court, upon the application of any assignee or creditor of such insolvent, to cause notice to be given to such person or persons, body politic or corporate, directing him or them to hold and retain the said property till the said court shall make further order concerning the same; and whereupon it shall be lawful for the said court further to order such person or persons, body politic or corporate, to deliver over such property, and to pay such debts as aforesaid, or any part thereof, to the provisional or other assignee or assignees of the estate and effects of such insolvent for the general benefit of the creditors of such insolvent entitled to claim under such judgment entered up by order of the said court as aforesaid; and such delivery and payment shall be made accordingly, in obedience to such order; and such person and persons, body politic and corporate, shall, by such payment and delivery so made in pursuance of such order of the said court, be discharged in respect of such property and debts against all persons whatsoever to all intents and purposes.

**NO ARREST FOR DEBTS TO WHICH ADJUDICATION EXTENDS.**

**XC.** And be it enacted, that no person who shall have become entitled to the benefit of this act by any such adjudication as aforesaid, shall at any time thereafter be imprisoned by reason of the judgment so as liable to aforesaid entered up against him or her, according to the act, or for or by reason of any debt or sum of money, or costs, with respect to which such person shall have become so entitled, or for or by reason of any judgment, decree, or order for payment of the same; but that upon every arrest or detainer in a prison upon any such judgment so entered up as aforesaid, or for or by reason of any such debt or sum of money or costs, or judgment, decree, or order for payment of the same, the person so arrested, or for or by reason of any such debt or sum of money or costs, or judgment, decree, or order for payment of the same, shall be liable to be arrested, or for or by reason of any such debt or sum of money or costs, or judgment, decree, or order for payment of the same, or to be detained by the judge of

the court  
from which  
process  
issued ;

who may  
order costs  
to be paid  
to him.

order for the payment of the same, it shall be for any judge of the court from which any shall have issued in respect thereof, and such is hereby required, upon proof made to his satisfaction that the cause of such arrest or detainer as hereinbefore mentioned, to release such person from custody, unless it shall appear to such upon inquiry, that such adjudication as aforesaid was made without due notice, where notice of this act required, being given to or acknowledged by the plaintiff on such process, or being dispensed with by the acceptance of a sum under this act, or otherwise; and at the same time if such judge shall in his discretion think fit, be lawful for him to order such plaintiff, or such son or persons suing out such process, to pay to the prisoner the costs which he shall have incurred on such occasion, or so much thereof as to such amount as to such person as to such judge shall seem just and reasonable, such causing a common appearance to be entered in such action or suit.

#### **NO EXECUTION FOR DEBTS TO WHICH ADJUDICATION EXTENDS.**

After discharge, no execution to issue against insolvent for debts, &c., to which adjudication extends. Discharge under this act may be pleaded generally (s).

XCI. And be it enacted, that after an insolvent person shall have become entitled to the benefit of any such adjudication as aforesaid, no fieri facias or eletigit shall issue on any judgment obtained against such prisoner for any debt or sum of money with respect to which such person shall so become entitled, nor in any action upon any contract or security for payment thereof, upon the judgment entered up against such person according to this act; and that if any suit or action shall be brought, or any scire facias be issued against any such person, his heirs, executors, or administrators for any such debt, or sum of money, or for any new contract or security for payment th

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(s) This section is similar in its provisions to the c. 57, s. 61.

ny judgment obtained against, or any statute or  
izance acknowledged, by such person for the  
except as aforesaid, it shall be lawful for such  
, his heirs, executors, or administrators, to  
generally that such person was duly dis-  
d according to this act by the order of adju-  
n made in that behalf, and that such order  
s in force, without pleading any other matter  
ly ; whereto the plaintiff or plaintiffs shall or  
ply generally, and deny the matters pleaded  
said, or reply any other matter or thing  
may show the defendant or defendants not to  
tled to the benefit of this act, or that such  
was not duly discharged according to the  
ons thereof, in the same manner as the plain-  
plaintiffs might have replied in case the de-  
t or defendants had pleaded this act, and a  
ge by virtue thereof, specially (t).

**IN DEBTS PAID, WARRANT OF ATTORNEY TO  
BE CANCELLED.**

I. Provided always, and be it enacted, that When  
y time after any such adjudication as afore- debts are  
all have been made with respect to any such satisfied the  
r in pursuance of this act, it shall appear to order war- court may  
isfaction of the said court for the Relief of rant of at-  
nt Debtors that all the debts in respect of torney to

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a plea of discharge under the Insolvent Debtors  
application by plaintiff, that although in England, he  
been served with a notice of the filing of defendant's  
was held bad on special demurrer. *Reid v. Croft*,  
N. C. 68 ; 7 Dowl. P. C. 122 ; 1 Arnold, 407, S. C.  
action against husband and wife for a debt contracted  
wife before coverture, they may jointly plead her  
, while a feme sole, under the 7 Geo. 4, c. 57, s. 61.  
*Lee, et Ux*, 1 Per. & Dav. 633 ; 17 Leg. Obs. 379,

eneral plea of insolvency only operates as a bar to  
ted in the schedule.

. If evidence could be given to show that any parti-  
bt had been omitted by mistake. *Tyers v. Strutt*,  
847.

be cancelled, and satisfaction to be entered on the judgment; which such adjudication was made have been charged and satisfied, it shall be lawful for court, upon application duly made, to direct warrant of attorney executed by such prisoner, this act to be cancelled, or, if judgment shall have been entered up thereon, to order satisfaction entered on such judgment, and the order of court for entering up such satisfaction shall be sufficient authority to the proper officer for entering up the same; and that if in any case it shall appear to the satisfaction of the said court that a debts of any such prisoner shall have been charged and satisfied as aforesaid there shall remain in the possession, or subject to the control of his or her assignee or assignees, any property of any kind or description whatsoever which shall belong to such assignee or assignees, or to which he may claim title, by virtue of the order made behalf or otherwise, by virtue of his or their assignee or assignees, it shall be lawful for court, on application duly made, to order such property so remaining as aforesaid to be vested in the person whose debts shall have been discharged and satisfied, or his heirs, executors, administrators, or assigns; and such order shall have the effect of vesting the same accordingly; any deed of release to be recorded in the same by which any such debt or debts shall be discharged, shall not be liable to an action for discharge.

and a re-assignment to be executed.

Where error in schedule without fraud, this act to operate upon the actual amount of debt (u).

#### MISTAKES IN AMOUNT OF DEBTS, &c., IN SCHEDULE.

**XCIII.** And whereas it may sometimes happen that a debt of, or claim upon, or balance due from such prisoner as aforesaid, may be specified in the schedule so sworn to as aforesaid at an amount which is not exactly the actual amount thereof, by reason of any culpable negligence or fraud, or evil intention on the part of such prisoner; be it enacted

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(u) This section is in effect the same as the 7 Geo. s. 63.

ie the said prisoner shall be entitled to all  
y benefit and protection of this act; and  
itor in that behalf shall be entitled to the  
f all the provisions made for creditors by  
in respect of the actual amount of such  
im, or balance, and neither more nor less  
same, to all intents and purposes, such  
the said schedule notwithstanding(v).

**'ER TO REMOVE PRISONER FROM TOWN TO  
COUNTY GAOL.**

. And be it further enacted, that if on any Court at  
being brought before the said court for the request of  
Insolvent Debtors, it shall appear to the creditors  
on of the said court that the usual place of may remove  
such prisoner, lately before his arrest, was from the prisoners  
county or place within the United Kingdom gaols of  
n the counties of Middlesex or Surrey, or London,  
ondon or borough of Southwark, it shall be Middlesex,  
r the said court, if it shall think fit, upon if their  
est of any creditor or creditors of such pri- usual resi-  
order such prisoner to be taken, at the ex- dence was  
such creditor or creditors, from the gaol in elsewhere,  
ch prisoner shall then be to the gaol of the to be heard  
r place where such prisoner had lately, be- county to  
arrest, his usual place of abode; and if which they  
usual place of abode was in Scotland or are re-  
then to the gaol of such county or place as moved(w).  
id court shall, under the circumstances of  
appear just and reasonable; and the order

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n action on bills or notes, where a defendant pleads  
ge under the Insolvent Act, and the point raised is  
ny of the notice given to the creditor, the jury  
their attention directed not only to the 40th sec-  
7 Geo. 4, c. 57, which prescribes the sort of notice  
, but also to the 63rd section of that statute, which  
at the prisoner shall have the benefit of the statute,  
he description in his schedule he has been guilty of  
*le negligence, fraud, or evil intention.* *Frampton v.*  
*s, 18 Leg. Obs. 301.*  
s section is similar in effect to the 7 Geo. 4, c. 57,

of the said court in that behalf, directed to the keepers of the said gaols respectively, shall be sufficient warrant, and they are hereby required, in pursuance thereof, to deliver and receive respectively the body of such prisoner, together with certificate of the day or days, and cause or cause of detainer against such prisoner, who shall from and after such removal be deemed to be in custody of the sheriff or other responsible officer of the county or place wherein the gaol shall be situate to whom such prisoner shall have been so removed; and the said court shall order such removal of the said prisoner from such gaol as aforesaid to be made on or before a day to be named in such order; and if such prisoner shall not be removed accordingly on or before the said day, or on or before a day which the said court shall name in any enlargement of the said order (which enlargement it is hereby empowered to make whenever it shall seem just and reasonable so to do), then the said court shall, upon application duly made, appoint a time for such prisoner to be brought up before the said court, and such advertisement thereof shall be published, and such notice given, and to such persons as the said court shall in any case direct; and when any such prisoner shall have been removed, and shall be in custody in any gaol in pursuance of such order, or of any enlargement thereof, the said court shall appoint a time and place for such prisoner to be brought up in the county or place where such gaol shall be situate, and such advertisement thereof shall be published, and such notice thereof given, and to such persons as the said court shall in any case direct (x): provided always,

After such removal

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(x) By the 7th section of the 20th rule, it is ordered, that in every case to be heard by a commissioner on circuit, or by justices, of a prisoner removed under the act 7 Geo. 4, c. 57, s. 65; or the act 1 and 2 Vict. c. 110, s. 94, or by the court, of a prisoner whom his creditor, after order obtained, has failed to remove, notice of the hearing shall be given by advertisement published ten days at least before the day of hearing, in the London Gazette; and also, where on an original hear-

that when any such prisoner shall be brought up to creditors be dealt with according to the provisions of this act, <sup>may oppose</sup> after such removal or failure of removal of such <sup>the dis-</sup> <sup>charge, as</sup> prisoner as aforesaid, it shall be lawful for all the <sup>in other</sup> creditors of such prisoner to oppose the discharge of <sup>cases.</sup> such prisoner as in other cases, although no such creditor shall have opposed or given notice to oppose the said discharge at the time first appointed for the bringing up of such prisoner; and that in all cases <sup>Expense o</sup> where any such prisoner shall be so removed as <sup>removal of</sup> aforesaid, the expense incurred by such removal by <sup>prisoners.</sup> the creditor or creditors requesting the same shall be repaid to him or them by the assignee or assignees of the estate and effects of such prisoner, out of such estate and effects, before any dividend shall be made thereof.

**PRISONER NOT ENTITLED TO DISCHARGE AFTER REMOVAL  
BY HABEAS CORPUS.**

**XCV.** Provided always, and be it further Benefit of enacted, that no prisoner shall be entitled to be discharged under this act upon his own petition, who having been arrested in any county or place where he had, at or lately before such arrest, his usual habeas place of abode, other than in the counties of Mid-<sup>corpus.</sup> <sup>act not to be allowed to prisoners removed by</sup> <sup>Middlesex or Surrey, or the city of London or borough of Southwark,</sup> such usual place of abode being distant more than twenty miles from the court house of the said court, shall be removed by any writ of *habeas corpus* sued out on his behalf, or by his procurement or request, from custody in such county or place to any other custody: provided neverthe-

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ing, notice in any newspaper in England would be required, by advertisement published in such newspaper seven days at least before the day of hearing, and also by service of the order for hearing, seven days at least before the day of hearing upon all detaining creditors, and all creditors (if any) who entered notice of opposition for the former hearing: unless in any case the court shall otherwise direct by special order concerning the notice in such case. (See *ante*, note (b), pl. 7, p. 82.)

Court may less, that it shall be lawful for the said court, permit such any case the said court shall think fit, at any prisoner to within ten days after the filing of the petition of be removed back at the expense of such prisoner, or within such further time as said court shall allow, upon the request of any person willing to pay the same ; prisoner, to order such prisoner to be taken, at expense of any person or persons who will pay same, from the gaol in which such prisoner then be to the gaol of the county or place where such prisoner was arrested as aforesaid ; and order of the said court in that behalf, directed to the keepers of the said gaols respectively, shall be sufficient warrant, and they are hereby required pursuance thereof to deliver and receive respecting the body of such prisoner, together with a certificate of the day or days, and cause or causes of death against such prisoner, who shall from and after removal be deemed to be in custody of the said other responsible officer of the county or wherein the gaol shall be situate to which such prisoner shall have been so removed by such and the said court shall order such removal of said prisoner from such gaol as aforesaid to be on or before a day to be named in such order any enlargement of the same, which enlargement said court is hereby empowered to make whenever shall seem just and reasonable so to do ; and proceedings any such prisoner shall have been removed may be had as in other cases. shall be in custody in any gaol in pursuance of order, the said court shall and may appoint and place for such prisoner to be brought up dealt with according to the provisions of this whereupon such proceedings shall be had as if the prisoner had been in the said last-mentioned at the time of filing his petition.

#### WHEN ADJUDICATION FINAL.

**Adjudication and order to be final, unless obtained on** XCVI. And be it further enacted, that every adjudication as aforesaid by the said court, commissioners, or justices as aforesaid, with respect to any prisoner, and the order thereupon, so made as afo-

be final and conclusive, and shall not be reviewed by said court, unless the said court shall hereafter find and sufficient cause to believe that such adjudication has been made on false evidence, or other-improperly made or fraudulently obtained, in which case it shall be lawful for the said court, upon the application of such prisoner, or of any creditor of such person, to order such prisoner, upon due notice to ven to such persons, and in such manner as the court shall direct, to attend, or to be brought up, the said matter to be reheard before the said court, one of the commissioners thereof on his circuit, or justices as aforesaid, as the case may require, shall thereupon rehear the same, and shall and if just cause shall appear, annul the original adjudication and order thereupon made in such matter, and shall have the same powers and authority upon such rehearing as upon any original hearing in pursuance of this act, and may adjudicate in such matter accordingly; and thereupon, in the former adjudication in the said matter shall be confirmed, such order, certificate, and warrant shall be made as required by this act to be made upon such original adjudication; and the said judge or commissioner or justices shall and may, if necessary, remand the said prisoner to the same county in which he was at the time of the former hearing of the matters of his petition, there to be sent to imprisonment as if the former adjudication therein had not been made; and thereupon all warrants which were in force against such prisoner at the time of his former discharge from custody shall be deemed to be still in force against him as if such former adjudication had not been made; and the gaoler keeper of the prison to which such prisoner shall be so remanded shall and is hereby required to receive such prisoner into his custody in pursuance of such remand, for doing which the order of remand in such case shall be his sufficient warrant; and where in Insolvent case such prisoner shall refuse or neglect to appear before the said court or commissioner or refusing to appear may

**be apprehended, &c.** justices, according to such order for rehearing aforesaid, a copy whereof shall have been duly served on such prisoner, it shall be lawful for the said court to order such prisoner to be apprehended, and committed to custody in such prison as the said court shall direct, and to issue its warrant accordingly, and to cause such prisoner to be brought for examination as often as to the said court commissioner or justices shall seem fit: provided always, that where upon such rehearing it shall appear to the said court, commissioner, or justices that such prisoner is not entitled to the benefit of this act until some future period according to the provisions hereinbefore contained, the said court, commissioner, or justices shall and may, if it shall appear reasonable, adjudge the discharge of such prisoner at such future period to be calculated without including the time during which such prisoner shall have been out of custody since the time appointed for his discharge by such former adjudication as aforesaid.

**COURT MAY AMEND ORDER OR WARRANT FOR  
DISCHARGE.**

**Where an order of discharge has been issued by mistake, the court may revoke and amend the same.**

XCVII. Provided always, and be it further enacted, that if in any case an order or warrant for the discharge of any such prisoner shall have issued erroneously, and which is not pursuant to the adjudication made in that behalf, it shall be lawful for the said court, on such error being shown to the said court, to revoke such order and warrant, and to annul, suspend, or amend the same, according to such adjudication, and if necessary to re-commit such prisoner to his former custody, when by such order or warrant he shall have been discharged therefrom: and the gaoler or keeper of the prison to whose custody such prisoner shall be so re-committed, is hereby required to receive such prisoner into his custody according to such re-commitment; and all detainers which were in force against such prisoner at the time of such discharge as aforesaid,

e deemed to be still in force against him, as erroneous order or warrant had not issued.

**T MAY EXAMINE INSOLVENT AFTER DISCHARGE.**

VIII. And whereas the estate, both real and personal, of any person whose discharge has been granted under this act may not be sufficiently valued or discovered in his schedule so sworn to, or the assistance of such person may be necessary to adjust, make out, recover, or manage his estate or effects, for the benefit of his creditors; therefore enacted, that it shall be lawful for the assignee or assignees of the estate and effects of such person whose discharge shall have been granted under this act, from time to time to apply to the said court that such person may be examined as to any matters or things relating to his estate and effects, either by the said court, or commissioner thereof on his circuit, or by any justice of the peace within the town of Berwick-Tweed; and if the said court shall order any examination before any such justice, such justice shall send for or call before him such person by warrant, summons, ways or means as he shall fit; and if such person shall appear before such justice, such justice shall examine him upon or otherwise, as to such matters and things as the assignee or assignees shall desire, relating to the estate and effects of such person; and if any person, on payment or tender of payment of reasonable charges as such justice shall judge to be just, shall neglect or refuse to appear before such justice, or having come before such justice, refuse to be sworn, or to answer such questions committed, such justice shall be put to him, relating to

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Where the assignees apply in a cause in which the individual defendant, they must entitle their affidavit in such application with their own christian and surnames, & those of the parties in the cause, and must in a clear and forcible manner show their titles as assignees. *Bendry v. Leg. Obs. 460*; and see rule 29, ante, p. 87.

the discovery of his estate and effects vested or intended to be vested in such assignee or assignees aforesaid, as required by the order of the said court; such justice shall certify such default to the court; and thereupon, and also in case such person shall neglect or refuse to appear before such court or commissioner at such time and place as shall be directed by such order, or appearing shall refuse to be sworn, or to answer such questions as shall be put to him, relating to the discovery of his said estate and effects, then and in any of such cases, it shall be lawful for such court or commissioner by warrant to commit such person to the common gaol of any county or place, there to remain without bail or mainprize until such time as he shall submit himself to the order of the said court in that behalf, and shall answer upon oath or otherwise, as shall be required, to all such lawful questions as shall be put to him in pursuance of the same for the purpose aforesaid.

**CONSEQUENCE OF WILFUL OMISSION OF PROPERTY  
IN SCHEDULE.**

**Persons wilfully omitting any thing in the schedule guilty of a misdemeanor, and liable to three years imprisonment.**

XCIX. And be it enacted, that in case any prisoner, whose estate shall, by an order under this act, have been vested in the said provisional assignee, shall, with intent to defraud the creditors or creditor of such prisoner, wilfully and fraudulently omit in his schedule, so sworn to as aforesaid, any effects or property whatsoever, or retain or except out of such schedule, as wearing apparel, bedding, working tools, and implements, or other necessaries, property of greater value than twenty pounds, every such person so offending, and any person aiding and assisting him to do the same, shall, upon being thereof convicted by due course of law, be adjudged guilty of a misdemeanor, and thereupon it shall be lawful for the court before whom such offender shall have been so tried and convicted, to sentence such offender to be imprisoned and kept to hard labour for any period of time not exceeding three years; and

that in every indictment or information against any person for any offence under this act, it shall be sufficient to set forth the substance of the offence charged on the defendant, without setting forth the petition, or order vesting such prisoner's estate in the provisional assignee, appointment of assignee or assignees, or balance sheet, order for hearing, adjudication, order of discharge or remand, or any warrant, rule, order, or proceeding of or in the said court, except so much of the schedule of such prisoner as may be necessary for the purpose.

**PERJURY.**

C. And be it enacted, that if any prisoner or Persons other person taking an oath under the provisions of swearing this act shall wilfully forswear and perjure himself falsely in any oath to be taken under this act, and shall be lawfully convicted thereof, the person so offend- ing shall suffer such punishment as may by law be inflicted on persons convicted of wilful and corrupt perjury; and that in all cases wherein by this act an oath is required, the solemn affirmation of any person being a Quaker, or other person by law allowed to affirm, shall and may be accepted and taken in lieu thereof; and that every person making such affirmation, who shall be convicted of wilful false affirmation, shall incur and suffer such and the same penalties as are inflicted and imposed upon persons convicted of wilful and corrupt perjury.

**ACT EXTENDED TO MARRIED WOMEN, IF PRISONERS.**

Cl. And be it enacted, that the provisions of this act shall extend to married women, being prisoners within the intent and meaning of this act, but that the order of the said court vesting the estate and effects of any such married woman in such provisional assignee as aforesaid shall operate upon all property, real and personal, to which she may be entitled for her separate use, or over which she shall have any power of disposition, notwithstanding

her coverture, or which shall be vested in an  
tees or trustee, or other person or persons  
benefit, and upon all personal estate and eff  
which she shall have the actual possession,  
her wearing apparel, bedding, and other such  
saries, not exceeding in the whole the v  
twenty pounds, and upon all other real and p  
estate and effects to which she shall be enti  
any manner whatsoever, in possession, rem  
or reversion, subject only to such right, ti  
interest as her husband may have therein, and  
out prejudicing any rights of her husband i  
real and personal estate and effects respec  
and all provisions in this act contained to  
the real and personal estate of any prisoner  
estate shall, under this act be vested in th  
provisional assignee, shall apply to such re  
personal estate and effects respectively, in th  
manner as the same would apply to such  
personal estate and effects if such woman ha  
sole and unmarried, subject only to the rig  
her husband therein; and such married woma  
also execute a warrant of attorney to confess  
ment in one of the superior courts aforesaid  
amount of the debts remaining unpaid, from  
she shall be so discharged as aforesaid; and  
warrant of attorney so executed shall be su  
authority for entering up judgment agains  
woman accordingly, notwithstanding her cov  
but such judgment shall not in any manner  
dice or affect the rights of her husband, exce  
the same shall be deemed and taken to be he  
in case she shall die in the lifetime of such hu  
to the end that the same may be discharged  
her personal assets in a due course of admis  
tion, or out of her real estate if any she shall h  
the time of her death, but without prejudice  
estate or interest of her husband therein as ten  
the courtesy; and in case such woman shall,  
the lifetime of her husband, become entitled  
property for her separate use, such judgmen

be enforced against such separate property by suit in equity, or otherwise, under the order of the said court, for the purpose of obtaining payment of so much of the debts in respect of which such woman shall have been discharged by the said court as shall then remain unpaid ; and in case such woman shall survive her said husband, such judgment may be after his death enforced against such woman or her property, real and personal, in such and the same manner, and with the same effect as it might have been if she had been sole and unmarried at the time when she executed such warrant of attorney, and at the time when such judgment shall have been entered up as aforesaid : provided always nevertheless, that the discharge of any married woman under the authority of this act shall not operate to discharge her husband from any debt in respect of which his wife shall be so discharged, but such debt, so far as the same shall remain unpaid or unsatisfied, shall be chargeable upon and in force against such husband, as fully to all intents and purposes as if his wife had not obtained such discharge.

**PROCEEDINGS WHEN PRISONER OF UNSOUND MIND.**

CII. And be it enacted, that if any person who shall at any time be a prisoner in any such prison proceeding as aforesaid, upon any such process as aforesaid, with pri-  
soners of  
unsound  
mind.  
shall be or become of unsound mind, and therefore incapable of taking the benefit of this act in such manner as he or she might have done if of sound mind, the gaoler or keeper of such prison shall forthwith require one or more justice or justices of the peace for the county, riding, division, or place wherein such prisoner shall be, to attend at the said prison, and inquire into the state of mind of such prisoner ; and thereupon, and also in case any such justice or justices shall receive information by other means, that any such prisoner is of unsound mind as aforesaid, such justice or justices shall go to the said prison, and by his or their own view, and by examination on

oath of such person or persons as he or they shall think fit to examine, shall inquire into the state of mind of such prisoner; and if it shall appear to the justice or justices upon such inquiry that such prisoner is of unsound mind, and therefore incapable of taking the benefit of this act in such manner as a person of sound mind might do, such justice or justices shall forthwith make a record of the same.

**Application may be made by persons on behalf of such prisoners.** and certify the same to the said court; and thereupon it shall be lawful for the said court, at the instance of any person or persons on behalf of such prisoner, to order notice to be inserted in the London Gazette, and in two or more public newspapers usually circulated in the neighbourhood of such person, and in the neighbourhood of the usual residence of such prisoner before he was committed to such prison, as the said court shall see fit, that application will be made to the said court for the discharge of such prisoner on a day to be specified in such order and notice, being twenty-one days at least from the day of publication of such one of the said Gazette and newspapers containing such notice as shall be last published; which notice, together with the service of the like notice on the creditor or creditors at whose suit such prisoner shall be detained in custody, or his or their attorney or attorneys in such suit, shall be deemed sufficient to authorize the said court to proceed to the discharge of such prisoner, if otherwise entitled to such discharge, according to the true intent and meaning of this act; and the said court shall proceed accordingly, and shall discharge such prisoner from custody, and do all other acts under this act, in case it shall appear that such prisoner might have obtained his or her discharge under this act if he or she had been of sound mind; and thereupon all and every estate, right, title, interest in law and equity, real and personal, power, benefit, and emolument whatsoever, which, if such prisoner was of sound mind, could or ought to be vested in the said provisional assignee, pursuant to the provisions of

**Court may discharge such prisoners;**

this act, shall, by force and virtue of the order of the said court for the discharge of such prisoner, be vested in the provisional assignee of the said court, or in the other assignee or assignees appointed by the said court, and named in the said order, or point in any other order of the said court in that behalf, assignees; is fully and effectually, and in the same manner, and with all and every the same consequences and effects, both in fact and law, to all intents and purposes whatsoever, as if such prisoner had been of sound mind, and such order as aforesaid had been made vesting the same in such provisional assignee at the time and in the manner in this act provided; and that it shall be lawful for the said court to order judgment to be entered up against such prisoner, in the same manner as if he or she had been of sound mind, and had executed a warrant of attorney to authorize the entering up of such judgment in the manner hereinbefore directed, and such order shall be a sufficient authority to the proper officer for entering up the same; and any dividend to be made by such assignee or assignees shall be made in such manner, and such proceedings shall be thereupon had, as are hereinbefore provided in the case of a dividend of the estate and effects of any prisoner made before adjudication; and the discharge of every such prisoner of unsound mind, so made as aforesaid, shall extend to all debts and sums of money to which the same might have extended if such prisoner had been of sound mind, and had duly filed his schedule according to the provisions of this act: provided always, that every such order of discharge, and of the appointment of an assignee or assignees, in such case, shall be entered of record in the said court, and proof thereof shall be received by such copy thereof as is hereinbefore directed to be received as proof of conveyances and assignments made in pursuance of this act.

Discharge  
not to ex-  
tend to  
crown  
debtors,  
unless  
Treasury  
give con-  
sent.

#### DISCHARGE OF CROWN DEBTORS.

CIII. And be it enacted, that this act shall not extend or be construed to extend to discharge any prisoner with respect to any debt due to her Majesty or her successors, or to any debt or penalty with which he shall stand charged at the suit of the crown, or of any person for any offence committed against any act or acts of parliament relative to any branch of the public revenue, or at the suit of any sheriff or other public officer, upon any bail bond entered into for the appearance of any person prosecuted for any such offence, unless three of the commissioners of her Majesty's Treasury for the time being shall certify under their hands their consent to such discharge.

#### HOW PRISONER UNDER WRIT OF CAPIAS OR EXTENT MAY BE DISCHARGED.

Prisoners  
under writ  
of capias  
or extent  
may apply  
to the  
barons of  
the Exche-  
quer to be  
discharged.

CIV. And be it enacted, that it shall be lawful for any person who may now or shall hereafter be imprisoned under or by virtue of any writ of *capias* or *extent*, issued and remaining in force at the instance or for the benefit and reimbursement of any surety or sureties, or other person or persons, or the inhabitants of any parish, ward, or place, who shall or may have advanced and paid the debt to the crown, and by reason whereof the commissioners of her Majesty's Treasury may not be authorized to give their consent as last aforesaid, to apply to the barons of her Majesty's court of Exchequer in England or Scotland for his discharge, giving one month's previous notice in writing to the surety or sureties, or person or persons aforesaid, or to the churchwardens or overseers of the parish, ward, or place at whose instance or for whose benefit respectively such *capias* or *extent* shall remain in force, of the intention of such person so imprisoned to make such application, and an enumeration and description of all and every the property, debts, and effects whatsoever of such person, in his own posse-

wer, or in the possession or power of any  
on or persons for his or her use, and for the  
to whom such application shall be made  
ich person to be brought before them, or  
, baron of the said court, to be examined  
touching and concerning his property and  
id if such person shall upon such examina-  
a full disclosure of all his property and  
d it shall otherwise appear to the satisfac-  
ch court reasonable and proper that such  
ould be no longer imprisoned under such  
such court or baron to order a writ of  
*et quoad corpus* to be issued out of the  
t for the liberation of such person from  
sonment: provided always, that no such  
as aforesaid shall be held or deemed to  
supersede such extent, or any proceedings  
except as to such imprisonment as afore-  
ie debt or debts seized under and by virtue  
nd for which such person shall be so im-

**ER TO PRODUCE PROCEEDINGS, AND COPY  
UNDER SEAL EVIDENCE.**

nd be it further enacted, that the proper Officer of  
the said court for the Relief of Insolvent court to  
all, on the reasonable request of any such produce  
s aforesaid, or of any creditor or creditors pro-  
risoner, or his, her, or their attorney, pro- give copies  
how to such prisoner, creditor or creditors, (z).  
ier, or their attorney, at such times as the  
t shall direct (a), such petition, vesting  
chedule, order of adjudication, and all other

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section incorporates the provisions of the 7 Geo.  
76.

23, orders, that the petitions and schedules, and  
nd papers filed therewith, shall be produced by the  
er for inspection and examination, until the last  
ing opposition, between the hours of ten and four:  
roduce books or papers in court must be given to  
aving the custody thereof on any day previous to  
which they are to be produced.

A copy of such proceedings under seal to be admitted as evidence.

orders and proceedings made and had in the suit of such petition, and all books, papers, and writings filed in such matter, and permit him, her, or them to inspect and examine the same, and shall provide any such prisoner, creditor or creditors, or their attorney requiring the same, a copy or copies of any such petition, vesting order, schedule, or of adjudication, or other order or proceeding, or such part thereof as shall be so required, receiving such fee as the said court shall appoint for supplying the same; and that a copy of such petition, vesting order, schedule, order of adjudication, and other orders and proceedings purporting to be signed by the officer in whose custody the same shall be, or his deputy, certifying the same to be a true copy of such petition, vesting order, schedule, or of adjudication, or other proceeding, and purporting to be sealed with the seal of the said court, shall at all times be admitted in all courts and places wherever as sufficient evidence of the same, without other proof whatever given of the same (b).

#### **PROCEEDINGS WHEN THE HEARING IS ON CIRCUIT.**

**Manner of proceeding when the hearing takes place before commissioners on circuit or justices in Wales.**

CVI. And be it enacted, that when an order is issued for any such prisoner to be brought up to be dealt with according to this act, at any place other than in Middlesex, Surrey, London, and Southampton aforesaid, such prisoner shall, within ten days from the issue of such order, or on such earlier day as may be named in such order, cause the duplicate of such petition, if any petition shall have been presented by such prisoner, and the duplicate of such schedule and all books, papers, and writings relating thereto in his or her possession or power, to be lodged with the clerk of the peace of the county, or county city or town, or of the town of Berwick-upon-Tweed, where he or she shall be in custody, or

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(b) The court will not require proof of this seal, but consider themselves bound to take judicial notice of it. *Duncan v. Edwards*, 1 Per. & Dav. 408

uty of the said clerk of the peace, to be appointed by the said court, and such prisoner shall be sent to such order as the said court shall make to him, in compliance with the directions of this act on behalf (c), and that the said clerk of the peace or his said deputy, shall, on the reasonable demand of such prisoner, or of any creditor or debtors of such prisoner, or of his, her, or their attorney, produce and show to him, her, or them the petition and schedule, and such books, papers, writings, and permit him, her, or them to inspect and examine the same, and may and shall receive the fee of one shilling from each and every creditor, or his or her attorney, at each time of his, or their so requesting and having the production of the same or any part thereof; and that the clerk of the peace or his said deputy shall produce for any such creditor or creditors, or his, her, or their attorney requesting the same, a copy or copies of such petition and schedule, or of such part or parts as shall be so required; and that such clerk of the peace, or his said deputy, shall be entitled to receive four-pence for every sheet so copied, con-

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Rule 17, orders, that in every case to be heard by a commissioner on circuit, or by justices in Berwick-upon-Tweed, where the petition was filed by a creditor, an office copy of the petition with the affidavit in support thereof, shall be annexed to the schedule to be lodged therewith with the clerk of the peace, or other person appointed to receive the same, according to the statute; and if the prisoner shall have been granted leave to file petition or schedule, or both, on affidavits for such purpose, an office copy of such affidavit or affidavits shall be annexed in like manner.

Rule 27th section of rule 21, orders, that in cases to be heard before a commissioner on circuit, all such affidavits and advertisements as aforesaid (noting those in the London Gazette) shall be lodged between the hours of twelve and four two days before the day notified in the London Gazette for the attendance of the commissioner; in cases to be heard by justices at Berwick, between the hours, two days before the day of hearing, at the office of the clerk of the peace or his approved deputy, or other person appointed for that purpose by the court, according to the act 2 Vic. c. 110, s. 106, in the town or place at which such attendance or such hearing as aforesaid, is appointed.

taining seventy-two words, and no more, t  
same shall be the last or only sheet, in w  
he shall be entitled to four-pence for suc  
only sheet, although it does not contain sev  
words; and that every such duplicate as :  
and all the said books, papers, and writi  
be brought to the place of such hearing,  
duced at such hearing by the said cler  
peace or his said deputy, who shall and  
required, to attend at the hearing of every  
soner, with proper officers to preserve ord  
court house or other place of such hear  
where any such county shall be within the  
one of the said commissioners, then such  
the peace or his said deputy shall and m  
clerk to such commissioner, to assist hi  
performance of his several duties under  
and in all such cases, both before such  
sioner and before such justices as aforesaid  
clerk of the peace or his said deputy shal  
sideration and recompense of and for his i  
this behalf, be entitled to receive from e  
prisoner so brought up for hearing as afo  
sum of five shillings, which shall be paid p  
to the bringing up such prisoner for h  
aforesaid: provided always, that if it sha  
time appear to the said court that it is  
that the duplicates of the petitions and sch  
prisoners confined in the gaol of any city,  
town, or place at which the commissionne  
said court shall give attendance on their ci  
made as aforesaid, should be lodged with  
clerk or other officer of such city, borough,  
place, and that the duties hereinbefore re  
such clerk of the peace should be performe  
city, borough, town, or place, by such tc  
or other officer of the same, it shall be law  
said court in any such case to order that  
cates of the petitions and schedules last  
and all such books, papers, and writings  
said, shall be lodged with such town clerk

officer, instead of such clerk of the peace as aforesaid, and that all duties hereinbefore required of such clerk of the peace in respect of the same shall be performed by such town clerk or other officer, instead of such clerk of the peace, and that the said town clerk or other officer shall thereupon do and perform all the duties aforesaid at such city, borough, town, or place in the matters of all prisoners confined in the gaol thereof, and shall be entitled to receive the same fees and payments in respect thereof, as are herein directed to be paid and made to such clerk of the peace or his deputy as aforesaid.

**JUSTICES MAY COMPEL ATTENDANCE OF WITNESSES.**

**CVII.** And it is hereby enacted, that such justices as aforesaid shall have such and the same powers of compelling the attendance of witnesses, and of requiring and compelling the production of books, papers, and writings for the purposes of this act, as are hereinbefore given to the said court and the commissioners thereof, subject to such provisoes and limitations as the same are made subject to; and that in all cases where the duplicate of any petition and schedule shall have been so lodged as aforesaid with any such clerk of the peace or his deputy as aforesaid, or with such town clerk or other officer as aforesaid, such clerk of the peace, or his said deputy, or such town clerk or other officer, is hereby authorized to issue all subpœnas under this act as may be requisite, in each of which the names of not more than four persons shall be inserted, and to receive for such subpœna from the person requiring the same the sum of two shillings and sixpence, and no more.

Clerk of the  
Court of the  
Peace may  
issue sub-  
pœnas.

**EXAMINERS FOR COUNTIES.**

**CVIII.** And be it enacted, that the said court Examiners for the Relief of Insolvent Debtors in all cases, or to be appointed for any commissioner thereof on his circuit, or such counties

**Their fees.** tices as aforesaid in open court at such sessions aforesaid respectively, may from time to time occasion shall require, appoint as many fit persons as shall be requisite to be examiners for the purposes of this act within any county or districts thereof, or any city or town; and that such miner shall and may receive for his trouble £ of one pound, and no more, for every meeting by him in pursuance of this act, to be paid person or persons requiring the same.

#### FEE FOR CONVEYING PRISONERS BEFORE COURTS

**Fee to keeper for carrying each prisoner before the court.** CIX. And be it enacted, that the keepers several prisons in London and Middlesex, and prisons of the Queen's Bench, Marshalsea, monger Lane, and of the borough of Southwark shall be entitled to receive the sum of three shillings and no more, from every prisoner in the custody of such keepers respectively, for carrying him the said court on the hearing of such prisoners aforesaid; and that all keepers of prisons shall be entitled to receive the sum of one shilling and a pence, and no more, from every prisoner in the custody of such keepers respectively, for carrying before a commissioner of the said court on circuit, or before such justices as aforesaid at the sessions aforesaid, on the hearing of such prisoners

**For paying the expense of conveying prisoners to assize towns;** that the expense of conveying any prisoner from gaol or other town appointed as the place of hearing the matters of his or her petition as aforesaid in every case where the gaol in which such prisoner shall be confined shall not be situate with gaol or other town, not exceeding one shilling, shall be paid to the keeper or gaoler or officer who shall bring such prisoner to such gaol or other town, in obedience to the order of the court, out of the estate and effects of such prisoner if the same shall be sufficient to pay such expense and if not, then such expense shall be paid by the treasurer of the county, or county of a city in which such prisoner shall be imprisoned.

shall be directed or ordered by the commis-  
sioner or justices before whom such prisoner shall be  
brought in pursuance of such order; and in all and also  
such cases the reasonable expense of such clerk of the other  
peace or his deputy as aforesaid, and of such expenses  
officer to preserve order, as hereinbefore pursuanc  
mentioned, and all other expenses necessary for  
making ready such court-house or other place as  
aforesaid for the despatch of business, in pursuance  
of this act, shall be paid by such treasurer as aforesaid; and the justices of the peace of every such  
county, or county of a city or town, are hereby em-  
powered and required to order such treasurer to pay  
the same at their general or general quarter sessions  
next ensuing the day when such hearing shall have  
been place: provided nevertheless, that where the  
hearing at any city, borough, town, or place shall be  
performed by any town clerk or other officer, in pur-  
suance of such order of the said court as above  
mentioned in that behalf, the reasonable expenses  
of such town clerk or other officer, and of such pro-  
ficer officers as aforesaid, and of such court-house  
or other place as aforesaid, shall be defrayed by the  
said city, borough, town, or place in the same man-  
ner as such like expenses are defrayed therein upon  
other occasions.

**INDEMNIFICATION TO SHERIFFS, &c.—GENERAL  
ISSUE TO BE PLEADED.**

CX. And be it further enacted, that every she- Sheriffs a  
niff, gaoler, keeper, or other officer of any prison, other per  
sons indei  
who shall do any thing in obedience to any order nified for  
of the said court for the Relief of Insolvent obeying t  
Debtors, or of any commissioner thereof, or of any orders of  
justice or justices of the peace, officer of the said the court  
court, or such examiner as aforesaid, authorized by  
the said court, by virtue of this act, shall be and is  
and are hereby indemnified for whatsoever shall be  
done by them respectively in obedience thereto; and If action  
that if any action of escape, or any suit or action, escape,&  
be brought against any judge, commissioner, justice brought,

the general of the peace, sheriff, gaoler, keeper of any prison may be pleaded, and this act given in evidence. any person, for performing the duty of his or her office, in pursuance of this act, such judge, commissary justice of the peace, sheriff, gaoler, keeper of any prison, and other person may plead the general issue, give this act and the special matter in evidence, and if the plaintiff be nonsuited, or discontinued in his or her action, or a verdict shall pass against her, or judgment shall be had for the defendant upon demurrer, the defendant shall have costs.

#### WHAT NECESSARY TO BE SET FORTH IN RULES OF COURT.

What shall be sufficient to be set forth in the rules and proceedings of the court.

CXI. And be it enacted, that in all rules, warrants, and other proceedings (d) of any court, or of any commissioner thereof, under any act, it shall be sufficient to set forth such order, or warrant, or in case of a warrant for apprehension or detention of any person for contempt, in disobeying any order or rule of any court, or for the apprehension or detention of any person for the appearance of such person before any court, or any commissioner thereof, or before any justice or justices of the peace, according to the order or for the enforcing any rule or order of any court, it shall be sufficient to set forth such order, and the warrant thereon, and that the person mentioned, has been duly discharged under any act, or some other act for the Relief of Insolvent Debtors, if he has been so discharged, or if he has not been so discharged, that he has applied to the said court for his or her discharge from custody, according to the provisions of the rule without setting forth in any such order, rule, warrant, or other proceeding the petition, order for the estate of any such prisoner in the possession of any assignee, appointment of assignee or assignee, the schedule, balance sheet, order for hearing,

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(d) See rule 29, *ante*, p. 87.

*Affidavits.—Costs.—Attornies.*

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1, order for discharge, or any other rule, or proceeding of or in the said court, or any thereof, except as aforesaid.

**BEFORE WHOM AFFIDAVITS MAY BE SWEORN.**

III. And be it enacted, that all affidavits to be before the said court, or any commissioner of, or any justices of the peace, or any officer in the said court, or any examiner appointed as said under this act, shall and may be sworn before the said court, or any commissioner thereof, any commissioner appointed by the said court for purpose of taking affidavits, or any master extraordinary in Chancery, or commissioner for taking affidavits in any of the superior courts of Westminster, or in Scotland or Ireland before a magistrate of a county, city, town, or place where any such affidavit shall be sworn (e).

**How Costs RECOVERED.**

CXIII. And be it enacted, that in all cases in Recovery which the said court, or any commissioner thereof, or any justices, is or are by this act authorized to award costs against any person or persons, it shall be lawful for the said court to cause such costs to be recovered from such person or persons in the same manner as costs awarded by a rule of any of the superior courts at Westminster may be recovered.

**ADMISSION OF ATTORNIES.—CONSEQUENCES OF PRACTISING WITHOUT.**

CXIV. And be it enacted, that the said court for the Relief of Insolvent Debtors shall and may admit, at their discretion, any number of fit persons,

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(e) Rule 24, orders, that all papers annexed to any affidavit, and referred to in the same, shall be marked as exhibited by the commissioner or other person before whom such affidavit shall be sworn.

practise  
therein.

being attorneys of any of the superior courts minister, to practise in the said court as on behalf of such prisoners in such actual as aforesaid, which admissions shall in all made without the payment of any fee or whatsoever, and shall be filed of record in court (f), and that all persons now ad-

(f) Rule 1, orders, that any attorney of the sup  
may be admitted to practise on behalf of the pris  
gaols of London, Middlesex, and Surrey, on prov  
tificate for the current year, excepting such as  
heretofore removed by the court.

Rule 2, orders, that in every case, the prisoner's  
his attorney, and the acceptance thereof by the lat  
filed with the first proceeding in the court, accor  
form therein set forth : provided, that in case of  
of such attorney, or of his absence from London,  
where he practises, such retainer may be received  
for him by some other duly certificated attorney  
thereof being stated in such acceptance. (*For  
tainer, see No. 14, Appendix.*)

Rule 3, orders, that the attorney of a prisoner  
total of his demand may exceed six pounds, shall  
to be taxed by the proper officer, and shall, on su  
prove by affidavit or affidavits the actual payme  
sum of money charged as paid, and the actual per  
every matter charged as done up to the time  
such affidavit ; and that all payments and matters  
are essentially necessary to the prisoner's discharg  
ther, that the sum of      and no more, has been  
for such attorney on account of such bill ; and t  
bill and affidavits shall in all cases be prepared in  
form ; and that any such affidavit shall be sworn  
try, not before the signing of the schedule, and  
sooner than eighteen days before the day of hearin  
on such bill, with name and number indorsed, bei  
to the proper officer, he shall have the schedule, &  
taxation on the following day ; and that he shall,  
sign the allocatur in duplicate ; and that the a  
deliver his bill so taxed, with the allocatur the  
prisoner, two days at least before the day appoint  
ing, in order that the prisoner may be able, at th  
take objection to such bill so taxed, *ex parte.*

The court will not allow an attorney to oppo  
vent's discharge, for a bill of costs he had neglect  
before the hearing. *In re Schultz*, 3 Legal Guid

Rule 4, orders, that no attorney shall, directly

attorneys in the court now established for the Relief of Insolvent Debtors shall be deemed to be effectually admitted in the said court hereby continued as aforesaid ; and that in case any person not so admitted on the files of the said court, or having after duly accepted admission been removed from the said files, or ceased to be an attorney of any of the superior courts at Westminster, shall practise in the said court as an attorney on behalf of any prisoner in such actual custody as aforesaid, he shall be deemed and taken to be guilty of a contempt of the said court, and that every person so guilty of any such contempt as aforesaid shall be liable to fine as well as imprisonment for the same.

**CHARGE FOR ADVERTISEMENTS.**

**CXV.** And be it enacted, that the sum of three shillings and no more shall be paid to any printer or proprietor of any newspaper for the insertion of any advertisement by this act directed to be inserted in any newspaper; and all printers and proprietors of newspapers are hereby required to insert the same, on payment of the said sum of three shillings for the insertion thereof, in such form as the said court or any commissioner thereof shall from time to time direct (g).

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employ any gaoler, turnkey, prisoner, or other person confined or residing within any gaol or prison, as a clerk or agent to solicit retainers, or to transact any business whatever relating to proceedings in this court, touching the relief or discharge of any prisoner, on pain of being removed from the files of the court; and that no attorney shall continue to practise in the court, while he shall himself be a prisoner for debt or otherwise.

(g) By the 2 & 3 Vic. c. 39, sec. 1, this section is repealed; and it is by that act enacted, that from and after the passing thereof, all printers and proprietors of newspapers shall and are required to insert any advertisement or advertisements directed to be inserted in any newspaper, on payment of a reasonable compensation for the insertion thereof in such form as the court or any commissioner thereof shall from time to time direct.

**PROCEEDINGS NOT LIABLE TO STAMPS.—No  
AUCTION DUTY.**

**Proceedings not liable to stamp duty, nor sales to auction duty.**

**CXVI.** And be it enacted, that no letter of attorney, affidavit, certificate, or other proceeding, instrument, or writing whatsoever, before or upon any order of the said court, or before or upon any order of any commissioner thereof, or before any justice or justices of the peace acting in execution of this act, nor any copy thereof, any advertisement inserted in any newspaper within the jurisdiction of the said court, shall be liable to or chargeable or charged with the payment of any stamp or other duty whatsoever; that no sale of any real or personal estate of such prisoner as aforesaid, for the benefit of his creditors, under this act, shall be liable to auction duty.

**POWER TO INVEST UNCLAIMED MONEY.**

**Court may invest unclaimed money, and apply profit towards expenses of the court.**

**CXVII.** And whereas it may happen that it may remain in the said court, produced by the states and effects of insolvent debtors, who have taken the benefit of this or some other act for Relief of Insolvent Debtors, which has not been claimed by the assignees or creditors of such insolvents; be it further enacted, that it shall be lawful for the said court to cause the same or any part thereof to be invested in government securities, and to apply the interest and profit arising therefrom towards defraying the expenses of the said court: provided always, that no such sum shall be so invested until the same shall have been in the hands of the said court for twelve months at least.

**APPROPRIATION OF INTEREST OF UNCLAIMED MONEY.**

**Court empowered out of profit arising from un-**

**CXVIII.** And be it enacted, that it shall be lawful for the said court for the Relief of Insolvent Debtors, in its discretion, to direct that the expenses of a suit for and obtaining the discharge of any person

1

*Repeal of Lords' Act.*

under this act, or any part of such expenses, may claimed  
and shall be paid out of the estate and effects of money t  
such prisoner which may be in the hands of the direct th  
provisional or other assignee or assignees under this payment  
act; and if the same shall not be sufficient for that expenses  
purpose, then that such expenses or any part thereof of prison  
shall be repaid and shall, in cases where the said court shall er's dis-  
satisfied that the prisoner has not the means of charge.  
destroying the same, be paid and advanced out of  
the interest and profit arising from any Government  
securities, upon which any unclaimed money pro-  
duced by the estates and effects of insolvent debtors  
may be invested; and in every such last-mentioned  
case, the estate and effects of such prisoner, which  
may then be, or may thereafter come to the hands  
and be vested in the provisional or other assignee or  
assignees under this act, shall be liable, in the first  
place, to repay the money so advanced and paid, and  
the said court is hereby authorized to make such order  
or orders as shall be necessary for the purpose.

**REPEAL OF LORDS' ACT, 32 GEO. 2, c. 28.**

**CXIX.** And be it further enacted, that from and after the passing of this act no prisoner for debt shall petition any court for his or her discharge under the provisions of an Act passed in the thirty-second year of the reign of his late Majesty King George the Second, intituled "An Act for the Relief of Debtors with respect to the Imprisonment of their Persons, and to oblige Debtors who shall continue in Execution in Prison beyond a certain Time, and for Sums not exceeding what are mentioned in the Act, to make Discovery of and deliver upon Oath their Estates for the Creditors' Benefit;" nor shall any creditor of any prisoner petition any court for the exercise of the compulsory powers given against debtors under the provisions of the act above-mentioned.

**CUSTODY OF RECORDS.**

Records of  
the court.

CXX. And be it enacted, that all the papers, documents, and money of and belon or received under the authority of the said now established for the Relief of Insolvent I and hereby continued as aforesaid, shall, fit after the passing of this act, remain and con the custody of the officers of the said court n having the custody of the same respective such officer or officers as the said court shal time direct to receive the same, and that records shall be deemed and taken to be the of the said court so hereby continued a said.

**CONSTRUCTION OF THE ACT.**

Construc-  
tion of Act.

CXXI. And be it enacted, that this extend to aliens, denizens, and women, both them subject thereto and to entitle them t benefits given thereby; and all powers give duties directed to be performed by the lord cellor may be performed by the lord k<sup>t</sup> lords commissioners of the great seal; powers given to or duties directed to be p by the Court of Review may be performed one of the judges of the same court; and th ever this statute hath used words import gular number or the masculine gender only be understood to include several matters a one matter, and several persons as well as son, and females as well as males, and bo porate as well as individuals, unless it be specially provided, or there be something in ject or context repugnant to such const and that this act shall not extend either to or Ireland, except where expressly mention

**POWER TO AMEND ACT.**

XXII. And be it enacted, that this act may be <sup>Act may</sup> ended, altered, or repealed during this session <sup>be altered.</sup> parliament.

**COMMENCEMENT OF ACT.**

XXIII. And be it enacted, that this act shall, Com-  
to all matters not otherwise provided for, com- mence-  
ce and come into operation on the first day of <sup>of act.</sup> October, one thousand eight hundred and thirty-  
t.

## THE ACT

FOR THE BETTER

**Protection of Purchasers against Judgments,**

&amp;c. &amp;c.



2 VICT., CAP. 11.

*An Act for the better Protection of Purchasers  
against Judgments, Crown Debts, Lis Pendens,  
and Fiats in Bankruptcy. [4th June, 1839.]*

**JUDGMENTS NOT HEREAFTER TO BE DOCKETTED.**

WHEREAS it is desirable that further protection should be afforded to purchasers against judgments, crown debts, and lis pendens : be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that no judgment shall hereafter be docketted under the provisions of an act passed in the fourth and fifth year of the reign of their late Majesties, King William and Queen Mary, intituled "An Act for the better discovery of judgments in the Courts of King's Bench, Common Pleas, and Exchequer, at Westminster," but that all such dockets shall be finally closed immediately after the passing of this act, without prejudice to the operation of any judgment already docketted and entered under the said recited act.

No judgments to be hereafter docketted under the provisions of 4 & 5 W. & M. c. 20.

so far as any such judgment may be affected provisions hereinafter contained (a).

**DOCKETTED JUDGMENTS NOT TO AFFECT LANDS  
TILL REGISTERED.**

And be it enacted, that no judgment already As to judg-  
tated and entered under the said recited act of ments al-  
late Majesties King William and Queen Mary ready  
after the first day of August, one thousand docketted.  
hundred and forty one, affect any lands, tene-  
, or hereditaments, as to purchasers, mortga-  
or creditors, unless and until such memoran-  
or minute thereof, as is prescribed in an act  
in the first and second years of her pre-  
fajesty Queen Victoria, intituled "An Act for 1 & 2 Vict.  
ing Arrest on Mesne Process and Civil Ac- c. 110.  
except in certain cases; for extending the  
dies of Creditors against the Property of  
rs; and for amending the Laws for the Relief  
olvent Debtors in England," shall be left with  
nior master of the court of Common Pleas at  
minster, who shall forthwith enter the same in  
er thereby directed in regard to judgments;  
ich officer shall be entitled for any such entry  
sum of five shillings (b).

**OR TO ENTER DATE OF MEMORANDUM IN A BOOK.**

And be it enacted, that in addition to the The date  
by the said last-mentioned act or by this act when the  
ed to be made in a book by the senior master memorandum of  
particulars to be contained in every memo- judgment  
m or minute left with him of any judgment, is left to be  
or order, rule or order, he shall insert in such entered in  
the year and the day of the month when every a book.  
memorandum or minute is so left with him (c).

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This section alters and amends the 19th section of the  
7 Vic. c. 110, *ante*, p. 25; and see note (o), *ante*, p. 26.  
See note (o), *ante*, p. 26.  
*bid.*

**JUDGMENTS TO BE REGISTERED AFRESH EVERY  
FIVE YEARS.**

Judgments after five years from entry, to be void, unless a fresh memorandum is left.

IV. And be it enacted, that all judgments of the superior courts, decrees or orders in a court of equity, rules of a court of common law, and orders in bankruptcy or lunacy, which shall be passed by the passing of the said recited act of the first and second years of the reign of her present Majesty, have been registered under the provisions thereof contained, or which shall hereafter be so registered, shall, after the expiration of five years from the date of the entry thereof, be null and void against lands, tenements, and other hereditaments, as to purchasers, mortgagees, or creditors, unless a like memorandum or minute as was required in the first instance is again left with the senior master of the said court of Common Pleas within five years before the execution of the conveyance, settlement, mortgage, lease, or other deed or instrument vesting or transferring the legal or equitable right, title, estate, or interest in or to any such purchaser or mortgagee for valuable consideration, or as to creditors, within five years before the right of such creditors accrued, and so, *toties quoties*, at the expiration of every succeeding five years; and the senior master shall forthwith re-enter the same in like manner as the same was originally entered; and such officer shall be entitled for any such re-entry to the sum of one shilling (d).

**EFFECT OF REGISTERED JUDGMENTS AS REGARDS PURCHASERS, &c.**

Judgments duly registered not to affect purchasers or mortgagees

V. Provided also, and be it enacted, that no judgment, decree, or order, or rule, or order as aforesaid, none of such judgments, decrees, or orders, rules or orders, shall bind or affect any lands, tenements, or hereditaments, or any interest

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(d) See note (o), ante, p. 26.

therein, further or otherwise or more extensively in more extensive respect, although duly registered, than a judgment of one of the superior courts aforesaid would have bound such purchaser or mortgagee before the mid act of the first and second years of the reign of her present Majesty, where it had been duly locketted according to the law then in force (*e*). than judgments of the superior courts would hitherto have done.

**JUDGMENTS BARRED CANNOT BE REVIVED.**

**VI.** Provided also, and be it enacted, that nothing Not to  
in the said recited act of her present Majesty nor revive  
in this act contained shall extend to revive or re-judgments  
restore any judgment which shall be extinguished or already ex-  
barred, nor shall the same extend to affect or pre-tinguished  
judice any judgment as between the parties thereto,  
or their representatives, or those deriving as volun-  
teers under them (*f*).

**WHEN PURCHASER, &c., BOUND BY A LIS PENDENS.**

**VII.** And be it enacted, that no lis pendens shall Purchasers bind a purchaser or mortgagee without express notice thereof, unless and until a memorandum or minute, containing the name and the usual or last known place of abode, and the title, trade, or profession of the person whose estate is intended to be affected thereby, and the court of equity, and the title of the cause or information, and the day when the bill or information was filed, shall be left with the senior master of the said court of Common Pleas, who shall forthwith enter the same particulars in a book as aforesaid, in alphabetical order, by the name of the person whose estate is intended to be affected by such lis pendens; and such officer shall be entitled for any such entry to the sum of two shillings and sixpence; and the provisions hereinbefore contained in regard to the re-entering of judgments every five years (*g*), and the fee payable to the offi-

(*e*) See note (*e*), ante, p. 27.

(*f*) *Ibid.*

(*g*) See sec. 4, ante, p. 136.

cer thereon, shall extend to every case of [d]ens which shall be registered under the pr of this act.

**Recog-**  
**nances**  
**entered**  
**into not to**  
**affect pur-**  
**chasers,**  
**unless duly**  
**registered**  
**as directed**  
**by this act.**

33 Hen. 8,  
c. 39.

13 Eliz.  
c. 4.

**RECOGNIZANCES FOR CROWN DEBTS TO BE REG:**

VIII. And be it enacted, that no judge  
tute, or recognizance which shall hereafter  
tained or entered into in the name or u  
proper account of her Majesty, her heirs or suc  
or inquisition by which any debt shall be fo  
to her Majesty, her heirs or successors, or  
tion or specialty which shall hereafter be i  
her Majesty, her heirs or successors, in the  
directed by an act passed in the thirty-thi  
of the reign of his late Majesty King He  
Surveyors of the King's lands, and the n  
the Officers there, and their authority," or  
ceptance of office which shall hereafter be a  
by officers whose lands shall thereby becon  
for the payment and satisfaction of arrearag  
the provisions of the act passed in the t  
year of the reign of her late Majesty Quee  
beth, intituled " An Act to make the Land  
ments, Goods, and Chattels of Tellers, R  
*et cetera*, liable to the payment of their  
shall affect any lands, tenements, or heredi  
as to purchasers or mortgagees, unless an  
memorandum or minute, containing the n  
the usual or last place of abode, and the titl  
or profession of the person whose estate is  
to be affected thereby, and also in the cas  
judgment the court and the title of the  
which such judgment shall have been c  
and the date of such judgment, and the  
of the debt, damages, and costs thereby re  
and also in the case of a statute or recogni  
sum for which the same was acknowledg  
before whom the same was acknowledged,  
date of the same, and also in the case of ar  
tion the sum thereby found to be due, and

the same, and also in the case of an obligation or  
balty the sum in which the obligee shall be  
nd, or for which the obligation or specialty shall  
nade, and the date of the same, and also in the  
of acceptance of office the name of the office  
the time of the officer accepting the same, shall  
et with the senior master of the said court of  
mon Pleas, who shall forthwith enter the same  
skars in a book, to be intituled "The Index to  
tors and Accountants to the Crown," in alpha-  
ed order, by the name of the person whose es-  
is intended to be affected by such judgment,  
ste, or recognizance, inquisition, obligation, or  
balty, or the acceptance of any office, and such  
er shall be entitled for any such entry to the  
of two shillings and sixpence; and all persons Registry  
be at liberty to search the same book, and also to be open  
ther book to be kept according to the provi- to inspection.  
of the said recited act of the first and second  
s of the reign of her present Majesty (h), or  
r of the said books, on payment of the sum of  
shilling, whether one only or both of the said  
s shall be searched, and no multiplication of  
s is to increase the fee.

**QUIETUS TO BE REGISTERED.**

.. And be it enacted, that whenever a *quietus* Quietus to  
be obtained by a debtor or accountant to the debtors or  
n, and an office copy thereof shall be left with accoun-  
senior master of the said Court of Common tants to  
s, together with a certificate, signed by the ac- the crown  
tant-general, that the same may be registered, to be regis-  
said master shall forthwith enter the same in tered.  
aid book of debtors and accountants to the  
n, in alphabetical order, by the name of the  
n whose estate is intended to be discharged by  
*quietus*, with the date, and shall for any such  
be entitled to a fee of two shillings and six-  
e.

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(h) See *ante*, sec. 19, p. 26.

**PROVISIONS FOR THE DISCHARGE OF ESTATES  
CROWN DEBTORS.**

For discharge of the estates of debtors or accountants to the crown in certain cases.

X. And whereas it is expedient to make provision for the discharge of an estate be to a debtor or accountant to the crown if claim of the crown in the hands of a purchaser, although the debt or liability shall be fully discharged; be it therefore enacted shall be lawful for the commissioners of her M Treasury of the United Kingdom of Great and Ireland for the time being, or any two of them, by writing under their hands, upon paper of such sums of money as they may think fit to require into the receipt of her Majesty's Exchequer to be applied in liquidation of the debt or of any debtor or accountant to the crown, on such other terms as they may think proper, to certify that any lands, tenements, or hereditaments any such crown debtor or accountant shall by the purchaser or mortgagee or intended chaser or mortgagee thereof, his or their executors, administrators, and assigns, wholly exonerated and discharged from all further claim against Her Majesty, her heirs or successors, for or in respect of any debt, claim, or liability, present or future, the debtor or accountant to whom such lands, tenements, or hereditaments belonged, or, in respect of leases for fines, to certify that the lessees, the executors, administrators, and assigns, shall be wholly exonerated and discharged, without prejudicing the rights and remedies of the crown against reversion of the lands, tenements, or hereditaments comprised in any such leases, and the relevant covenants reserved and contained by and the same; and thereupon the same lands, tenements, or hereditaments shall respectively be held absolutely exonerated and discharged as aforesaid in the cases of leases without prejudice aforesaid.

**EFFECT OF DISCHARGE OF PART OF DEBTOR'S LANDS.**

**XI.** Provided also, and be it enacted, that any Discharge such certificate, or the discharge of any such lands, of part of ments, or other hereditaments by virtue of this the estate it, shall in nowise impeach, lessen, or affect the of a debtor ght or power of her Majesty, her heirs or successors, to the levy the whole of any debt or demand which may crown not any time be due from any such debtor or ac- to affect buntant to the crown out of or from any other claim of nds, tenements, or hereditaments which would the crown ave been liable thereto in case no such certificate on other ad been granted and no such discharge had been obtained.

**PROTECTION AGAINST SECRET ACTS OF BANK- RUPTCY.**

**XII.** And whereas it is expedient that further For protec-  
tion should be made for the protection of pur-  
chasers against secret acts of bankruptcy and fiats  
bankruptcy; be it therefore enacted, that all secret fiats  
mveyances by any bankrupt *bond fide* made and ex-  
ecuted before the date and issuing of the fiat  
against such bankrupt shall be valid, notwithstanding  
any prior act of bankruptcy by him committed,  
provided the person or persons to whom such bank-  
rupt so conveyed had not at the time of such con-  
veyance notice of any prior act of bankruptcy by him  
committed.

**WHEN FIAT MUST ISSUE TO IMPEACH PURCHASES FROM BANKRUPTS.**

**XIII.** And be it enacted, that no purchase from Purchases  
by bankrupt *bond fide* and for valuable considera- from bank-  
rupts not to  
tions, where the purchaser had notice at the time of be im-  
purchase of an act of bankruptcy by such peached  
bankrupt committed, shall be impeached by reason unless com-

mission thereof, unless the commission against such bankrupt shall have been sued out within twelve calendar months after such act of bankruptcy.  
is sued out within twelve months.

**ACT NOT EXTENDED TO IRELAND.**

**Act not to extend to Ireland.** XIV. And be it enacted, that this act shall extend to Ireland.

## A N A C T

FOR THE BETTER

## Protection of Parties dealing with Bankrupts,

&amp;c. &amp;c.



2 &amp; 3 VICT., CAP. 29.

*An Act for the better Protection of Parties dealing with Persons liable to the Bankrupt Laws.*  
[19th July, 1839.]

WHEN CONTRACTS BONA FIDE MADE WITH BANKRUPTS  
ARE VALID.

WHEREAS by an act passed in the sixth year of the reign of his late Majesty King George the Fourth, intituled "An Act to amend the laws relating to Bankrupts," it was among other things enacted, that all payments really and *bond fide* made by any bankrupt or by any person on his behalf, before the date and issuing of the commission against such bankrupt, to any creditor of such bankrupt (such payment not being a fraudulent preference of such creditor), should be deemed valid, notwithstanding any prior act of bankruptcy by such bankrupt committed, and that all payments really and *bond fide* made to any bankrupt before the date and issuing of the commission against such bankrupt should be deemed valid, notwithstanding any prior act of bankruptcy committed, and that such creditor should not be liable to refund the

6 G. 4,  
c. 16.

2 Vict.  
c. 11.

same to the assignees of such bankrupt, provided the person so dealing with the bankrupt had not at the time of such payment to such bankrupt notice of any bankruptcy committed: and whereas by an act passed in this present session of parliament, intituled "An Act for the better Protection of Purchasers against Judgments, Crown Debts, Lis Pendens, and Fists in Bankruptcy," (a) it is amongst other things enacted, that all conveyances by any bankrupt *bond fide* made and executed before the date and issuing of the fiat against such bankrupt, shall be valid, notwithstanding any prior act of bankruptcy by him committed, provided the person or persons to whom such bankrupt so conveyed had not at the time of such conveyance notice of any prior act of bankruptcy by him committed: and whereas it is expedient that further protection should be given to persons dealing with bankrupts before the issuing of any fiat against them: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that all contracts, dealings, and transactions by and with any bankrupt really and *bond fide* made and entered into before the date and issuing of the fiat against him, and all executions and attachments against the lands and tenements or goods and chattels of such bankrupt, *bond fide* executed or levied before the date and issuing of the fiat, shall be deemed to be valid, notwithstanding any prior act of bankruptcy by such bankrupt committed; provided the person or persons so dealing with such bankrupt, or at whose suit, or on whose account such execution or attachment shall have issued, had not at the time of such contract, dealing, or transaction, or at the time of executing or levying such execution or attachment, notice of any prior act of bankruptcy by him committed;

All contracts, &c.,  
*bond fide*  
made by  
and with  
any bank-  
rupt pre-  
vious to  
the date  
and issuing  
of any fiat  
to be valid,  
&c., if no  
notice had  
of prior  
bank-  
ruptcy.

provided also, that nothing herein contained shall be deemed or taken to give validity to any payment made by any bankrupt being a fraudulent preference of any creditor or creditors of such bankrupt, or to any execution founded on a judgment on a warrant of attorney or cognovit given by any bankrupt by way of such fraudulent preference.

POWER TO REPEAL ACT.

II. And be it further enacted, that this act may Act may be repealed or altered by any other act in this be re-present session of parliament. pealed.

**A N   A C T**

AMENDING THE ACT FOR  
**Abolishing Arrest on Mesne Process**  
 &c. &c.

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2 & 3 VICT., CAP. 39.

*An Act to amend an Act passed in the last Session of Parliament, for abolishing Arrest on Mesne Process in Civil Actions except in certain cases, for extending the Remedies of Creditors and for amending Laws for the Relief of Insolvent Debtors in England. [17th August, 1839.]*

**REPEAL OF 1 & 2 VICT., c. 110, s. 115, AS TO INSERTION OF ADVERTISEMENTS.**

1 & 2 Vict. WHEREAS by an Act passed in the last Session of Parliament, intituled "An Act for abolishing Arrest on Mesne Process in Civil Actions except in certain cases, for extending the Remedies of Creditors and for amending Laws for the Relief of Insolvent Debtors in England," was amongst other things enacted, that the sum of three shillings and no more shall be paid to the printer or proprietor of a newspaper for the insertion of any advertisement by that act directed to be inserted in any newspaper, and all printers and proprietors of newspapers were thereby required to insert the same on payment of the said sum of three shillings for the insertion thereof, in such form

The court for the Relief of Insolvent Debtors, or any commissioner thereof, should from time to time direct: and whereas it is just and expedient that the said act (a) should be altered and amended as hereinafter mentioned: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that so much of the said act as is hereinbefore recited shall be and the same is hereby repealed; and that from and after the passing of this act, all printers and proprietors of newspapers shall and are hereby required to insert any advertisement or advertisements by the said re-cited act directed to be inserted in any newspaper, on payment of a reasonable compensation for the insertion thereof, in such form as the said court, or any commissioner thereof, shall from time to time direct (b).

Repeal of provision in recited act respecting insertion of advertisements.

**POWER TO APPOINT COMMISSIONERS IN THE COUNTRY  
TO TAKE BAIL.**

II. And whereas it is expedient that persons residing at a distance greater than ten miles from the Court-house in Portugal-street who may be willing to enter into recognizances of sureties for the due appearance of insolvent debtors before the court, commissioners on their circuits, or before justices of the peace in Berwick-upon-Tweed, should be enabled to enter into such recognizances without the necessity of appearing for such purpose before the court itself at its usual and ordinary place of sitting; be it therefore enacted, that the chief commissioner and other the commissioners of the court for Relief of Insolvent Debtors for the time being shall and may, by one or more commission or commissions under the seal of the said court, from time to time as occasion shall require, empower

(a) See 1 & 2 Vict., c. 110, s. 115, *ante*, 129.

(b) *Ibid.*

*Taking Recognizance of Bail.—Country Bail.*

such and so many fit and proper persons as they shall think necessary, in all and every the several towns and counties within England and Wales and the town of Berwick-upon-Tweed, to take and receive all and every the recognizance or recognizances of sureties into which any persons shall be willing to enter for the due appearance of insolvent debtors according to such several and respective recognizances, and in such form as the court, in pursuance of the statute in that behalf, may and shall direct and require (c).

**TAKING RECOGNIZANCE OF COUNTRY BAIL.**

**Persons  
empowered  
to enter  
into recog-  
nizances,  
&c.**

III. And be it enacted, that in any case of a prisoner whose estate and effects shall have been or shall hereafter be, by order of the court for Relief of Insolvent Debtors, vested in the provisional or other assignee, and who shall be confined in the gaol of any county, town, or place other than in London, Southwark, Middlesex, or Surrey, and who shall have filed his schedule in the said court according to the statute in that behalf, it shall and may be lawful for any person or persons who may be willing to enter into such recognizances as before-mentioned, whose usual and ordinary place of residence shall be distant more than ten miles from the Court-house in Portugal-street, London, to appear before a person duly appointed and empowered in manner aforesaid, and there to enter into and acknowledge such recognizance of sureties for the due appearance of the insolvent, according to such forms and in such terms and manner as shall or may be prescribed by the said court; which said recognizances of sureties so taken as aforesaid shall be transmitted and filed in the said court, with an affidavit of the due taking of the said recognizance of such sureties by some credible person present at the taking thereof, upon

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(c) See note (i), *ante*, 49. And see also sec. 38, p. 47, to which part of the section this is an amendment; and rule 19, note (f), *ante*, 47.

payment of such fees as have been usually received for the taking of the recognizances in the said court (*d*); which recognizances so taken, transmitted, and filed shall be of the like force and effect as if the same were taken before the said court; for the taking of every such recognizance of sureties the person or persons so empowered shall receive only the sum or fee of two shillings and sixpence and no more.

**POWER TO MAKE RULES REGULATING THE AMOUNT OF BAIL.**

IV. And be it enacted, that the commissioners of the said court shall make such rules and orders regulating the amount, and for the taking of such recognizances as to them shall seem meet, so as such sureties be not compelled to appear in person in the said court to justify themselves, but the same may and the said is hereby directed to be determined before the said court, or a commissioner thereof, by affidavit or affidavits duly taken before the person or persons so empowered as aforesaid, who are hereby empowered and required to take the same.

**COMMISSIONERS ON CIRCUIT MAY TAKE BAIL.**

V. And be it enacted, that any commissioner of the said court on his circuits shall and may take and receive all and every such recognizances of sureties as any person or persons shall be willing to take and acknowledge before him, which, being transmitted, shall without oath be filed in manner aforesaid, upon payment of the usual fees (*e*).

**WHEN BAIL HAVE JUSTIFIED, INSOLVENT TO BE DISCHARGED.**

VI. And be it enacted, that as soon as such sureties shall have justified by affidavit in manner aforesaid, and such recognizances as hereinbefore men-

(*d*) See Table of Fees in the Appendix.

(*e*) *Ibid.*

*Period of Commencement of Act.*

when  
sureties  
justified  
by affida-  
vit, &c.

tioned shall have been filed, the court shall th upon issue a warrant to the gaoler for the disch of such insolvent from custody accordingly, and shall have such and the like privileges and be ject to such and the like liabilities as the statut that behalf directs (f).

**PERIOD OF COMMENCEMENT OF ACT.**

Com-  
mencement  
of act.

VII. And be it enacted, that this act shall c mence and come into operation on the first da October, one thousand eight hundred and thi nine, except where any other commencement is cified in this act.

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(f) See sec. 38, *ante*, p. 47, and *Gomme's case*, note

## RULES AND ORDERS

OF

**The Court for Relief of Insolvent Debtors,**

MADE THE 1<sup>ST</sup> DAY OF OCTOBER, 1838.

—♦—

*Attorneys of the Superior Courts may Practise.*

IT IS ORDERED—I. That any attorney of the superior courts may be admitted to practice on behalf of prisoners in the gaols of London, Middlesex, and Surrey, on proving his certificate for the current year; excepting such as have been heretofore removed by the court. (s. 114, p. 128.)

*Retainer.—Filing.*

II. That in every case, the prisoner's retainer of his attorney, and the acceptance thereof by the latter, shall be filed with the first proceeding in the court, and shall be in the form prescribed by this rule (g).

Provided, That in case of the illness of such attorney, or of his absence from London or the place where he practises, such retainer may be received and accepted for him by some other duly certificated attorney, the cause thereof being stated in such acceptance. (*ibid.*)

*Delivery of Bill of Costs.*

III. That the attorney of a prisoner, where the total of his demand may exceed six pounds, shall cause a bill to be taxed by the proper officer, and shall, on such taxation, prove by affidavit or affidavits the actual payment of every sum of money charged as paid, and

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(g) See form, No. 14, Appendix.

the actual performance of every matter charged as done up to the time of swearing such affidavit; and that all payments and matters so charged are essentially necessary to the prisoner's discharge; and further that the sum of                          and no more has been paid to or for such attorney on account of such bill:— and that the said bill and affidavits shall in all cases be prepared in the printed form; and that any such affidavit shall be sworn in the country not before the signing of the schedule, and in town not sooner than eighteen days before the day of hearing; and that on such bill, with name and number indorsed, being delivered to the proper officer, he shall have the schedule, &c., ready for the taxation on the following day; and that he shall, if requested, sign the *allocatur* in duplicate: and that the attorney shall deliver his bill so taxed, with the *allocatur* thereon, to the prisoner, two days at least before the day appointed for hearing, in order that the prisoner may be able at the hearing to take objection to such bill so taxed *ex parte*. (s. 114, p. 128; and see *In re Schultz*, 3 Legal Guide, 72.)

*Attorneys not to employ Gaoler, &c., or practise while in Prison.*

IV. That no attorney shall directly or indirectly employ any gaoler, turnkey, prisoner, or other person confined or residing within any gaol or prison, as a clerk or agent to solicit retainers, or to transact any business whatever relating to proceedings in this court touching the relief or discharge of any prisoner, on pain of being removed from the files of the court; and that no attorney shall continue to practise in the court, while he shall himself be a prisoner for debt or otherwise. (s. 114, p. 128.)

### *Signing and attesting Petition.*

V. That every petition in form prepared by the court shall be signed in the presence of the attorney of the prisoner or creditor petitioning, or of the keeper of the gaol in which the prisoner petitioning shall be confined, and such attorney or keeper shall attest the same accordingly. (s. 35, p. 42.)

*Copy of Causes to be filed with Petition.*

VI. That in all cases there shall be filed with the petition a certificate from the gaoler, of the day or days and cause or causes of detainer against the prisoner. (s. 35, p. 42.)

*Affidavit to be filed with Creditor's Petition.*

VII. That with the petition of a creditor there shall be filed an affidavit of such creditor, stating the accounts between himself and prisoner, the securities held by him, the benefit accrued from his judgment, and other matters as contained in the form of affidavit prepared together with the petition under direction of the court, and sold by *Hodson, Printer to the Court*, 15, *Cross Street, Hatton Garden, and 112, Fleet Street*. (s. 36, p. 43.)

*Certificate of no prior Petition filed.*

VIII. That before vesting order is made on petition of a creditor, there shall be annexed to such petition a certificate of the proper officer, that no prior petition has been filed in the same case, since the commencement of the prisoner's custody. (s. 36, p. 43.)

*Notice of Vesting Order.*

IX. That when a vesting order of the estate of a prisoner has been made on the petition of a creditor, notice thereof, together with an order to file schedule, shall forthwith be given to such prisoner by service of a copy of the same by a messenger of the court; and that delivery to the gaoler or other known officer of the prison in which, or in the rules or liberties of which, such prisoner is confined, shall be deemed good service of such notice and order upon the prisoner in such case: which delivery shall be made personally when the gaol is within ten miles from the Court-house in Portugal Street, and by letter, post-paid, where the gaol is at a greater distance. (s. 36, p. 44.)

*Estate Paper.*

X. That with a prisoner's petition there shall be filed an account in writing, in form prepared by the court, signed by the prisoner, and attested by his attorney (or in country cases by the keeper of the gaol), of all the real and personal estate and effects of such prisoner then in his possession or under his controul ; stating the value, and, if liable for rent, stating landlord's name and particulars of his demand, in order that such property may be duly ascertained and given up to the provisional assignee : and that the said account shall be signed, attested, and filed in duplicate : and in cases of persons confined in the prisons of London, Middlesex, and Surrey, excepting the gaol of Kingston-upon-Thames, every such estate paper shall have endorsed thereon a duplicate of the notice for appraisement given to the brokers of the court, with the day of leaving the same at their office marked thereon by them or their clerk. (s. 35, p. 41.)

*Affidavit for leave to file Petition after usual Time.*

XI. That every application by a prisoner for leave to file petition after the expiration of fourteen days allowed for that purpose in town cases, and after the expiration of twenty-one days from the commencement of the custody in country cases, shall be supported by the affidavit of the prisoner in form prepared by the court; in which shall be stated the degree, profession, or trade, and the last place of abode of such prisoner, and the time of his or her first arrest in the action wherein he or she is then detained, and the time of commitment to the prison where he or she is then confined ; together with a statement of all monies paid or spent, and of all property spent, sold, made over, assigned, disposed of, or in any manner parted with by him or her since such first arrest, and in what manner, and to whom ; and also the cause of not having sooner presented such petition : and such application shall be made by petition with the said affidavit and the said gaoler's certificate annexed ; and there shall also be annexed such

account in writing of estate and effects, as is in all cases required by the tenth rule of court to be filed with the petition ; which account shall be verified by the said affidavit; and on such application being granted, the duplicate of the said account shall be delivered to the officer of the court, at the time of filing the petition : —the gaoler's certificate will be transferred to the petition. (s. 35, p. 41.)

*Inventory and Valuation of Excepted Articles to be filed with Schedule.*

XII. That in all cases there shall be filed with the schedule an inventory of the excepted articles, with a valuation of the same respectively ; to which shall be added a certificate of the appraiser, signed by him : which certificate, when made by a broker of the court, shall be according to the printed form ordered to be used by them ; and in other cases in the form prescribed by this rule (h). (s. 69, p. 79.)

*Brokers.*

XIII. That all such appraisements in London, or within ten miles thereof, shall be made by the brokers of the court ; who shall be allowed for completing the same six clear days on notices given from the 28th October to the 1st March, and five clear days on notices given during the rest of the year : and they shall have their return ready for delivery to the prisoner or his attorney not later than ten o'clock on the morning following the days allowed for valuation. (s. 69, p. 79.)

*General Balance Sheet.*

XIV. That every prisoner shall with his schedule file a general balance sheet, in form prepared by the court, of his receipts and expenditures from the date of the earliest debt in his schedule up to the time of signing his petition, if the prisoner petitioned ; and to the time of signing his schedule if a creditor petitioned, including all property of every kind, with description of the

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(A) See form, No. 13, Appendix.

same, which he may have had at any time during that period : together with the time when, persons to whom, and consideration for which any part thereof shall have been disposed of or parted with by him ; and that in the said general balance sheet reference may be made, for the particulars of any matter, to the special balance sheet contained in the schedule ; but that in the schedule reference may not be made to such general balance sheet ; and that the prisoner shall also state in the said general balance sheet the cause of his or her present insolvency ; and the amount of debts, if any, still due by him under any prior insolvency or bankruptcy. (s. 69, p. 78.)

*Signing and attesting Schedule and Balance Sheet.*

XV. That every schedule and balance sheet and every amendment thereto, shall be read over to the prisoner by or in the presence of the attorney named in the retainer, before such prisoner shall sign the same ; and that the balance sheet, and every side of every sheet of the schedule, and of any amendment thereof, shall be signed by the prisoner ; and such signature shall be attested by the said attorney, and not by any clerk, and such reading over, signatures, and attestation shall be verified by the affidavit of such attorney to be filed with the schedule ; for preparing and swearing which affidavit no charge shall be made :—

Provided that in case of the illness of such attorney, or of his absence from London or the place where he practises, the matters aforesaid, whether concerning the petition or schedule, may be done by some other attorney of the court ; in which case the cause thereof shall be stated in each attestation, and also in such affidavit as aforesaid. (s. 69, p. 78.)

*Application for leave to file Schedule after usual time.*

XVI. That every application to the court for leave to file schedule after the expiration of fourteen days from the filing of the prisoner's petition, or from notice to file schedule on creditor's petition (as the case may be), shall be supported by the affidavit of the prisoner,

m prepared by the court, in which shall be the cause of not having filed such schedule in me; and if the said prisoner shall have filed his n without a special application to the court, the ffidavit shall also contain such statement con- g the arrest, commitment, and property of the er as is required in an affidavit made on applica- or leave to file petition. (s. 69, p. 76.)

*Copy of Creditor's Petition and Affidavits to be annexed  
to Schedule.*

II. That in every case to be heard by a commis- on circuit, or by justices in Berwick-upon- l, where the petition was filed by a creditor, an copy of such petition with the affidavit in support f shall be annexed to the schedule to be lodged with the clerk of the peace or other person ed to receive the same according to the statute ; the prisoner shall have obtained leave to file pe- or schedule, or both, on affidavit made for such ie, an office copy of such affidavit or affidavits e annexed in like manner. (s. 106, p. 121.)

*When Order for Hearing may issue.*

III. That every order for hearing by a commis- on circuit (the circuit appointments having been ed), also every order for hearing by justices of ace, shall be ready for delivery at the opening of fice on the second day (exclusive of Sunday) after ing of the schedule ; but that the same shall not ed before that time : and in every such case the ate of the petition and schedule shall be given out he order for hearing, and the warrant of attorney be prepared and ready to be given out on the h day after the issuing of such order :—provided o order for hearing by a commissioner on circuit e issued later than the twenty-eighth day before y notified in the Gazette for the attendance of the issioner ; and that no order for hearing by justices peace shall be issued later than the twenty-eighth

day before the day to be appointed for such hearing.  
(s. 70, p. 79; and see s. 32, p. 37.)

*Application for Discharge on Sureties.*

XIX. That a prisoner desiring to be discharged on sureties till the hearing, must apply (which he may do as soon as schedule is filed) in the office of the court (town or country as the case may be) and deliver the names, &c., of necessary parties entered in the proper printed form, exhibiting at the same time the affidavits of the proposed sureties, he will thereupon receive a form of notice to be served on the detaining creditor and the proposed sureties, containing the appointment for entertaining such application, with instructions by the court: where the hearing is to be by the court in London, the prisoner must attend the court when such application is entertained; and the gaoler will be ordered to bring him before the court accordingly.  
(s. 38, p. 47.)

*Notices.*

XX. That henceforth notice of the making o the vesting order and filing of schedule, and of the time and place appointed for the prisoner to be brought up, shall be given to creditors and persons claiming to be creditors, whether such debts are admitted or disputed in the schedule, in the following manner : (s. 71, p. 81.)

*By Personal Service.*

1st. In all cases, by personal service of a copy of the order for hearing, made twenty-one days at least before the day of hearing, upon every detaining creditor and every creditor for five pounds or more, resident or carrying on business in London, or within ten miles thereof: also upon the attorney or agent (resident as aforesaid) of every detaining creditor suing by attorney.

*N.B.* Delivery of the said copy to the wife, son, daughter, clerk, or servant of the party, at the usual place of abode or business of such party; or, where the party is assignee of a bankrupt, to

the solicitor of such assignee, or his clerk, or servant, at the usual place of business of such solicitor, shall be deemed equivalent to personal service. (*ante*, p. 81.)

*Service by Letter.*

2nd. In all cases, by sending twenty-three days at least before the day of hearing, a copy of the order for hearing by the general post, rightly and methodically addressed, and with the proper post town thereon, to every detaining creditor and every creditor for five pounds or more, resident in England, elsewhere than as above-mentioned, or in Scotland or Ireland; and to the attorney or agent (resident more than ten miles from London) of every detaining creditor suing by attorney: or by such personal service as is above-mentioned, made upon any such creditor or attorney.—Letters to the attorneys or agents of detaining creditors, and to detaining creditors suing in person, must be post paid.—It is not required that notice should in any case be given both to the attorney and agent.

*N.B.* Where the sheriff has failed to communicate a detainer to the gaoler before the issuing of the order for hearing, the plaintiff in such case will not be deemed a detaining creditor within the above rule. (*ibid.*)

*By Advertisement in London Gazette.*

3rd. In all cases by advertisement published in the London Gazette twenty-one days at least before the day of hearing. (*ante*, p. 82.)

*In Edinburgh and Dublin Gazettes.*

4th. In cases where the prisoner is described in the schedule as having resided in Scotland or Ireland, also in cases where four or more of the creditors of the prisoner are resident in Scotland or Ireland, by advertisement published twenty-one days at least before the day of hearing, in the Edinburgh or Dublin Gazette, as the case may be. (*ibid.*)

*In Country Newspapers.*

5th. In all cases where the prisoner is described in the schedule as having resided in some county in England other than London, Middlesex, and Surrey, by advertisement published eighteen days at least before the day of hearing in some newspaper usually circulated in the neighbourhood of the prisoner's last usual place of residence in such county. This rule applies to each such county, if more than one in the description. (*ibid.*)

*Advertisement in Country Cases in addition to the above.*

6th. In cases to be heard by a commissioner on circuit, or by justices in Berwick-upon-Tweed, by advertisement published eighteen days at least before the day of hearing in some newspaper most usually circulated in the county or place where the case is ordered to be heard. (*ibid.*)

*Removal and Notice of Hearing.*

7th. In every case to be heard by a commissioner on circuit or by justices, of a prisoner removed under the Act 7 Geo. 4, c. 57, sec. 65 (*i*), or the Act 1 & 2 Vict. c. 110, sec. 94 (*j*), or by the court, of a prisoner whom his creditor, after order obtained, has failed to remove, notice of the hearing shall be given by advertisement published ten days at least before the day of hearing, in the London Gazette; and also, where on an original hearing notice in any newspaper in England would be required, by advertisement published in such newspaper seven days at least before the day of hearing: and also by service of the order for hearing, seven days at least before the day of hearing upon all detaining creditors, and all creditors (if any) who entered notice of opposition for the former hearing: unless in any case the court shall otherwise direct by special order concerning the notice in such case. (*ibid.*; and see also p. 106.)

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(*i*) See ante, note (*w*), p. 105.

(*j*) *Ante*, 105.

*Mode of completing Service of Notices.*

8th. Where at the hearing notices shall appear to have been served on any creditor not in sufficient time, and any other or further hearing of the case shall be appointed for that or any other cause at a subsequent time, notice of such last-mentioned appointment shall be given to the said creditor in such time as will, together with the time of giving the former notice, complete the regular period of twenty-one or twenty-three days, as the case may be; which being done, such creditor shall be deemed to have had due notice: provided, that such second notice shall in no case be effectual, if served less than seven days before the day of hearing in cases requiring personal service, and nine days in case of services by the post; nor unless the prisoner shall consent to waive notice of opposition to be made at such hearing: and that notice for the original hearing shall likewise be of no effect, if served less than seven and nine days in such cases respectively. (*ibid.*)

*Appearance of Creditor to oppose waives Defect in Service.*

9th. Where the service has been defective, and the creditor shall appear against the prisoner at the hearing, he shall be deemed to have had due notice, unless the court, commissioner, or justices shall otherwise direct. (*ante*, p. 83.)

*Service and Proof of Notices.*

XXI. That services shall be made, and that proof of notice shall be given, and affidavits be made and ed in manner following: (s. 71, p. 83.)

*In the London Gazette.*

1st. No proof shall be required at the hearing of advertisement in the London Gazette, which is ordered to be inserted always by the officer of the court, and by no other person. (*ibid.*)

*In Newspapers.*

2nd. Proof of all other advertisements shall be

made by production of the Gazette or newspaper in which the same were published. (*ibid.*)

*Proof of Services.*

3rd. Proof of all services, whether personal or by post, shall be made by affidavit, to the satisfaction of the court, commissioner, or justices. (*ibid.*)

*How Messengers' Services made and verified.*

4th. All personal services in London, and within ten miles thereof, shall be made by the messengers of the court, who shall make affidavit of the same.—The copies of orders for hearing to be served, duly addressed, and numbered according to the number in the schedule, must be delivered to them three clear days at the least (exclusive of Sunday) before the last day of service, in cases for original hearing, and one clear day at the least (exclusive of Sunday) before the last day of service, in cases for adjourned hearing; and at the same time shall be delivered the original order for hearing, together with a list in duplicate of persons to be served, the entries in which lists shall correspond with the directions written on the notices. (*ibid.*)

*Messengers to make Affidavit of Services by Post.*

5th. All services by the post shall be made by the messengers of the court, who shall make affidavit of the same. The copies folded, addressed, and numbered according to the number in the schedule, must be delivered to them one day at least before the last day of service, together with a list in duplicate (separate from the lists for personal service) the entries in which shall correspond with the directions on the letters. (*ibid.*)

*When Affidavits of Service, &c., in Town Cases to be filed.*

6th. In cases to be heard by the court, all such affidavits and advertisements as aforesaid (excepting those in the London Gazette) shall be filed at the office eight days at least before the day of hearing in

original cases, and two clear days at least (exclusive of Sunday) before the day of hearing in adjourned cases. (s. 71, p. 84.)

*When Affidavits of Service, &c., in Country Cases to be filed.*

7th. In cases to be heard on circuit, all such affidavits and advertisements as aforesaid (excepting those in the London Gazette) shall be lodged between the hours of twelve and four, two days before the day notified in the London Gazette for the attendance of the commissioner; and in cases to be heard by justices at Berwick, between the same hours, two days before the day of hearing at the office of the clerk of the peace, or his approved deputy or other person appointed for that purpose by the court, according to the Act 1 & 2 Vict. c. 110, sec. 106, in the town or place at which such attendance or such hearing as aforesaid is appointed. (*ibid.*; and see sec. 106, *ante*, p. 121, note (c).)

*Notice of Opposition.*

XXII. That notice of intention to oppose a prisoner's discharge be given in manner following: (s. 72, 84.)

*In Town.*

1st. In cases to be heard by the court, by entry made in the proper page and column of the book kept for that purpose at the office of the court, between the hours of ten in the forenoon and four in the afternoon, three clear days before the day of hearing, exclusive of Sunday, and exclusive both of the day of entering such notice and of the day of hearing.

*N.B.* Entrance to the office in Portugal Street, Lincoln's-Inn Fields. (*ibid.*)

*In the Country.*

2nd. In cases to be heard by a commissioner or justices, by giving a notice of such intention in writing to the prisoner, three clear days before the day of

hearing, exclusive of Sunday, and exclusive both of the day of giving such notice, and of the day of hearing. (*ibid.*)

*After or on failure of Removal.*

3rd. In cases of hearing after removal or failure of removal, notice of opposition shall be given in manner aforesaid, one clear day before the day of hearing; unless where such notice was given for the original hearing or where the prisoner may waive the same on giving short notice of the hearing. (See *ante*, rule 20, p. 158, and pl. 8, p. 82.)

*Production of Schedule, &c., for Inspection.*

XXIII. That the petitions and schedules, and the books and papers filed therewith, shall be produced by the proper officer for inspection and examination, until the last day of entering opposition, between the hours of ten and four: notice to produce books or papers in court must be given to the officer having the custody thereof on any day previous to the day on which they are to be produced. (s. 105, p. 119.)

*Exhibits.*

XXIV. That all papers annexed to any affidavit, and referred to in the same, shall be marked as exhibited by the commissioner or other person before whom such affidavit shall be sworn. (s. 112, p. 127.)

*Appointment of Assignees.*

XXV. Assignees will be appointed, if expedient by the court or a commissioner, at any time after vesting order made. In a case heard at Berwick, a nomination by the justices will be attended to.

*N.B.* Parties applying for appointment of assignees are at liberty to take into the office such vouchers as they may think fit, showing the wish of a majority or other portion of the creditors. Appointments will be made on proof of the desire of such majority, unless some cause to the contrary shall appear in any case. (s. 45, p. 54.)

*Provisional Assignee may sell Property.*

XXVI. That the provisional assignee shall in each case, after vesting order made, sell all goods, chattels, and personal estate of the prisoner of which such provisional assignee shall take possession according to the statute ;—and shall account for the produce to the court. (s. 42, p. 52.)

*Certificate from Assignee that Property has been given up.*

XXVII. That in every case to be heard by a commissioner on circuit, in which there shall have been any property in the possession or under the controul of the prisoner to be given up to the provisional assignee, here shall be obtained and produced at the hearing a certificate from the provisional assignee, or other sufficient voucher, that such property has been duly given up or accounted for. (*ibid.*)

*Examination and Report in Proof of Debts satisfied.*

XXVIII. That any party desiring an examination and report upon the documentary proofs of debts satisfied, or other such matters, shall deliver his vouchers and equest to the clerk of the rules, who will thereupon fill up a rule of reference, and forward the same to the examining officer. (s. 74, p. 87.)

*Documents to be numbered, &c.*

XXIX. That after a case has been numbered, in all applications made to the court whether in court or in the office, the motion paper, petition, or other document by which the application is made, shall be marked with the number of the case, and T, or C, as it may be; and that every order, &c., delivered from the office shall be marked in like manner. (ss. 74, 88, 98, 111, *ante.*)

BY THE COURT.

## GENERAL ORDERS

OR

The Court of Chancery,

OF MAY 10TH, 1839.



THE Right Honourable CHARLES CHRISTOPHER, Lord COTTONHAM, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable HENRY, Lord LANGDALE, Master of the Rolls, and the Right Honourable Sir LANCELOT SHADWELL, Vice-Chancellor of England, doth hereby order and direct in manner following; that is to say,

*Party to whom Costs, &c., are ordered, may issue Execution for same.*

I. That every person to whom in any cause or matter pending in this court, any sum of money or any costs have been ordered to be paid, shall after the lapse of one month from the time when such order for payment was duly passed and entered, be entitled by his clerk in court to sue out one or more writ or writs of *fieri facias* or writ or writs of *elegit* of the form hereinafter stated (*k*), or as near thereto as the circumstances of the case may require (*l*). (s. 19, p. 25.)

*Clerk to mark Date of Entry on Order.*

II. That upon every such order hereafter to be entered, the entering clerk of *this court in whose division the same may be*, shall, at the request of the party leaving the same, mark the day of the month and year

(*k*) See forms of these writs in the Appendix.

(*l*) This order is also applicable to the court of Exchequer in Equity.

which the same shall be so left for entry, and no writ of fieri facias or elegend shall be sued out upon any such order, unless the date of such entry shall be so marked thereon as aforesaid (*m*). (s. 19, p. 25.)

*Sheriff to execute Writs as in other Cases.*

III. That such writs when sealed shall be delivered the sheriff or other officer to whom the execution of such like writs issuing out of the superior courts of common law belongs, and shall be executed by such sheriff or other officer as nearly as may be in the same manner which he doth or ought to execute such like writs, and such writs when returned by such sheriff or other officer, shall be delivered to the clerks in court, by whom respectively they were sued out, or be left at their respective seats, and shall thereupon be filed as record in *the office of the six clerks of this court*. And as far as for the execution of such writs, such sheriff or other officer shall not take or be allowed any fees other than such as are or shall be from time to time allowed lawful authority for the execution of the like writs issuing out of the superior courts of common law (*n*).

*on Sheriff's Return of Goods not sold, a Writ of Venditioni Exponas may issue.*

IV. That if it shall appear upon the return of any such writ of fieri facias as aforesaid, that the sheriff or other officer hath by virtue of such writ seized but not sold any goods of the person ordered to pay such sum money or costs as aforesaid, the person to whom such sum of money or costs is payable, shall immediately after such writ with such return shall be filed as record, be at liberty by his clerk in court to sue out a writ of venditioni exponas in the form hereinafter

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*m)* Omitting the words in italics, this order is rendered applicable to the court of Exchequer in Equity, but with the adoption of those words, it applies to the courts of Chancery.

*n)* This order, omitting the words in italics, is applicable to the court of Exchequer in Equity, but with those words, to the courts of Chancery.

stated, or as near thereto as the circumstances of the case may require (*o*).

*Endorsements on Writs.*

V. That on every such writ of fieri facias and elegit so to be issued as aforesaid, there shall be endorsed the words, "by the Court," and also thereunder the calling and place of residence of the party against whom such writ shall be issued, and also the name and residence or place of business of the solicitor at whose instance the same shall be issued, and the name of the clerk in court issuing the same, and that every such writ be also endorsed for the sum to be levied, *costs of writ, sheriff's poundage, &c.*, according to the form used upon like writs issuing out of the superior courts of common law (*p*).

*Fees allowed on issuing Writs.*

VI. That for every such writ of fieri facias or venditioni exponas so to be issued as aforesaid, there shall be allowed to the clerk in court issuing the same the sum of eighteen shillings and seven pence, and for every such writ of elegit the sum of one pound ten shillings, and that there be allowed to the solicitor at whose instance any such writ of fieri facias, elegit, or venditioni exponas, shall be issued, the sum of six shillings and eight pence for instructions for the said writ, and that there be also allowed to such solicitor the further sum of six shillings and eight pence for attending to procure a warrant, and for attending to instruct the officer charged with the execution of such writ (*q*).

(*o*) This order applies both to the courts of Chancery, and the Exchequer in Equity.

(*p*) This order with the words in italics applies to the court of Exchequer in Equity, but without them, to the courts of Chancery.

(*q*) This order applies to the courts of Chancery, and the court of Exchequer in Equity.

# A P P E N D I X

OF

## F O R M S, &c.

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### No. 1.

#### FORM OF AFFIDAVIT TO HOLD TO BAIL BY ONE DEPONENT.

In the Q. B. [or "C. P.", or "Exch. of Pleas"].

Between { A. B., Plaintiff,  
                  and  
                  C. D., Defendant.

A. B. of [*the residence and addition of deponent*], maketh oath and saith, that C. D. of [*residence of defendant*], is justly and truly indebted to this deponent in the sum of £ for [*here state the subject-matter of the claim for which you intend arresting defendant*] (a). And this deponent further saith, that [*the facts here stated must show that the defendant is about to quit England, unless forthwith apprehended, as for example (b)*, in a conversation that he this deponent had with the said C. D., he the said C. D. informed him this deponent that it was his the said C. D.'s intention in a short time to leave this country for the United States of America. And also this deponent saith, that he believes the above information to be true, and that the said conversation between this depo-

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(a) For forms of statements in the different actions, see Chitty's Forms, 5th ed. p. 212, to 227.

(b) The facts here set forth were inserted in an affidavit on which a judge's order was obtained; and see the case of *Batemans v. Dunn, ante*, p. 3, note (k).

nent and the said C. D. took place ; and th<sup>i</sup>  
ponent saith, that he believes that it has bee  
habit for the said C. D. to travel backwards  
forwards from England to the United Stat  
America ; and also that the said C. D. has s  
at one time at the United States of America, a  
deponent has been informed and verily believe  
the space of upwards of twenty years ;] and th  
ponent further saith, that he verily believes th  
said C. D. will quit England, unless he is fort  
apprehended and holden to bail for the cau  
action aforesaid.

Sworn, &c.

A.

[*If the affidavit is sworn before a judge,  
the jurat is thus :—*]

“ Sworn at my chambers, Rolls Garden,  
Chancery Lane, in the county of Middle-  
sex, this      day of      , 1840, before  
me.” }

[*If sworn before a commissioner :—*]

“ Sworn at      , in the county of      ,  
the      day of      , 1840, before me,  
F. J. a commissioner, &c.” } [*should the  
court not be mentioned at the top of the  
affidavit, say, “for taking affidavits in  
the court of Q. B., or C. P., or Exch. of  
Pleas,” according to the circumstances.*] }

[*If sworn before a master :—*]

“ Sworn at      Temple, in the city of  
London, this      day of      , 1840, }  
before me.” }

## No. 2.

## THE LIKE BY TWO DEPONENTS.

In the Q. B. [or "C. P.", or "Exch. of Pleas"].

Between { A. B., Plaintiff,  
                   and  
                   C. D., Defendant.

A. B. of , and E. F. of [*here insert the residence and addition of each deponent*], severally make oath and say, and first this deponent A. B. for himself saith, that C. D., the above-named defendant, is justly and truly indebted unto this deponent in the sum of £ , for [*here state the cause of action for which you intend arresting defendant*] (c); and this deponent further saith, that there is probable cause for believing that the said C. D. is about to quit England, unless he be forthwith apprehended [*here set out the reasons for entertaining such belief, as for example (d)*], this deponent having been informed that the said C. D. had stated to the other deponent E. F. and other persons, that previous to his leaving the residence of the said E. F. on the      day of      last, that it was his intention of proceeding to America to become an agent for the sale or management of lands there, and which information this deponent verily believes to be true. And this deponent E. F. for himself saith, that the said C. D. has been in the habit from time to time of residing at this deponent's house for nearly      years last past, until the      day of      last, when the said C. D. left the residence of this deponent. And this deponent further saith, that a short time prior to the said      day of

(c) See forms of statements in the different actions in Chitty's Forms, 5th ed. 212 to 227.

(d) The reasons here assigned were used in an affidavit upon which a judge's order was granted; and see *Bateman v. Dunn*; and *Harvey v. O'Meara, ante*, pp. 3, 4.

last, the said C. D. stated to this deponent that the proprietors of a mining company in Cornwall were desirous that the said C. D. should leave England in consequence of law proceedings that were then pending and expected to take place, and that he intended to go to Baden, a principality of Suabia, for that purpose, without he procured an agency for the management or sale of lands in America belonging to ; and within a few days prior to the said C. D. leaving the residence of this deponent as aforesaid, the said C. D. stated to this deponent and other persons that he was going to Liverpool to treat with parties connected with land in America, for the sale or management of lands there. And this deponent further saith, that he was unable to learn where the said C. D. was to be met with until the      day of      last, when he was informed of the said C. D. having been seen in Liverpool. And this deponent further saith, that he hath been informed by several persons that the said C. D. had stated to them that he was about to proceed to America, and which information this deponent verily believes to be true; and this deponent further saith, that he, on the      day of      instant, saw the said C. D., and in answer to this deponent's inquiry of the said C. D. as to his residence, he stated that he was only stopping with some American friends in      street, but declined telling the number of the house. And this deponent further saith, that the said C. D. is to be found in the city of London as this deponent hath been informed and believes]. And this deponent lastly saith, that there is probable cause for believing that the said C. D. is about to quit England unless he be forthwith apprehended.

A. B.  
E. F.

Sworn, &c. [see forms of  
jurats, ante, p. 194.] }

## No. 3.

## FORM OF WRIT OF CAPIAS.

VICTORIA, &c. To the sheriff of [or to the constable of Dover Castle, or to the mayor and bailiffs of Berwick-upon-Tweed, or as the case may be], greeting (e).

We command you that you omit not by reason of any liberty in your bailiwick, but that you enter the same, and take C. D. if he shall be found in your bailiwick, and him safely keep until he shall have given you bail, or made deposit with you according to law, in an action on promises [or of debt, &c.] at the suit of A. B. , or until the said C. D. shall by other lawful means be discharged from your custody. And we do further command you that on execution hereof you do deliver a copy hereof to the said C. D. And we hereby require the said C. D. to take notice, that within eight days after the execution hereof on him, inclusive of the day of such execution, he should cause special bail to be put in for him in our court of to the said action, and that in default of so doing, such proceedings may be had and taken as are mentioned in the warning written or endorsed hereon. And we do further command you, that immediately after the execution hereof you do return this writ to our said court of , together with the manner in which you shall have executed the same, and the day of the execution thereof; or if the same shall remain unexecuted, then that you do so return the same at the expiration of one calendar month from the date hereof, or sooner if you shall be thereto required by order of the said court, or by any judge thereof. Witness at Westminster [or as the case may be], the day of .

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(e) For the directions of the writ to the sheriff or other returning officer of the different counties, &c., in England, see Chit. Arch. Prac., 7th ed. 508, *et seq.*; and see 1 & 2 Vic. c. 110, s. 3, *antè*, p. 4; and see also 5 & 6 Wm. 4, c. 76, s. 61.

*Memorandum to be subscribed to the Writ.*

This writ is to be executed within one calendar month from the date thereof, including the day of such date, and not afterwards.

*A Warning to the Defendant.*

If a defendant, having given bail on the arrest, shall omit to put in special bail as required, the plaintiff may proceed against the sheriff or on the bail bond.

*Endorsements to be made on the Writ.*

Bail for      pounds by order of [naming the judge making the order], dated this      day of

This writ was issued by F. J. of      , attorney for the plaintiff [or plaintiffs] within-named.

*Or,*

This writ was issued in person by the plaintiff within-named, who resides at [mention the city, town, or parish, and also the name of the hamlet, street, and number of the house of the plaintiff's residence, if any such there be].

## No. 4.

**AFFIDAVIT TO MAKE A DEBTOR A BANKRUPT  
UNDER THE 1 & 2 VICT. c. 110, s. 8 (f).**

In the Court of Bankruptcy (g).

A. B. of [residence and addition of deponent] maketh oath and saith, that C. D. [if against two or more persons as partners, after stating their several residences and additions, add the words "and co-partners,"] is justly and truly indebted to this deponent in the sum of £      [the sum really due] for [here set out the subject-matter of the debt, as

(f) See ante, p. 10.

(g) The title of the court here inserted must be used according to the place where, and the party before whom, the affidavit is sworn.

*n an affidavit to hold to bail (h), as for example, "principal money due on two certain bills of exchange bearing date the      day of      , 1840, drawn by one E. F. upon and accepted by the said C. D. for the payment of the said sum of £      at a day now past, and by the said E. F. endorsed to this deponent"] : and this deponent further saith, that the said C. D. is a trader within the meaning of the laws relating to bankrupts as his deponent hath heard and verily believes.*

*Sworn at the court of Bankruptcy, }  
Basinghall-street, in the city of London, }  
on, this      day of      , 1840, }  
before me.*

## No. 5.

## NOTICE TO A DEBTOR FOR PAYMENT.

To Mr.                    of [*residence of debtor*].

I hereby give you [*if partners*, "and each of you,"] notice that an affidavit of debt, a copy of which is hereunto annexed, has been filed in the office of the registrar of the court of Bankruptcy, situated in Basinghall-street, in the city of London, according to the provisions of a certain act passed at the session of parliament holden in the 1st & 2nd years of her Majesty Queen Victoria, intituled "An Act for abolishing Arrest upon Mesne Process in Civil Actions except in certain cases; for extending the remedies of Creditors against the property of debtors, and for amending the Laws relating to solvent Debtors in England," and that unless within 21 days after service upon you personally of this notice and of the said copy of the said affidavit re-unto annexed, you pay or secure the said debt by the said affidavit mentioned, or compound for the same to the satisfaction of the said A. B., or enter into such bond as by the said act is in this behalf

(h) See note (c), ante, p. 171.

provided, you [*if partners*, “and each of you”] will be deemed to have committed an act of bankruptcy on the 22nd day after the said service thereof and of the copy of the said affidavit; and I do hereby require on behalf of the said A. B., as the attorney of the said A. B., immediate payment of the said debt in the said affidavit mentioned. Dated this day of , 1840.

F. J.  
Attorney for the within-named A. B.

## No. 6.

## FORM OF BOND.

In the Court of Bankruptcy.

Know all men by these presents, that we, C. D. of [*the name, residence, and description of debtor*], E. F. of and G. H. of [*the names, residences and additions of each of the sureties*], are jointly and severally held and firmly bound to A. B. [*the residence, &c., of the creditor*] in the penal sum of £ of good and lawful money of Great Britain, to be paid to the said A. B., his certain attorney, executors, administrators, or assigns; for which payment to be well and faithfully made, we bind ourselves, and each of us, and our and each of our heirs, executors, and administrators, and every of them jointly and severally by these presents, sealed with our respective seals, and dated this day of

, one thousand eight hundred and forty.

Whereas the said A. B. by his affidavit sworn and filed in her Majesty's court of Bankruptcy, deposed that the said C. D. was justly and truly indebted to him the said A. B. in the sum of £ [*the amount sworn to in the affidavit*], and that the said C. D. was a trader within the meaning of the laws now in force respecting bankrupts, as the said A. B. verily believed; and whereas the said A. B. did on the day of [*date of service of copy affidavit, and notice for payment*], cause the said C. D. to be

personally served with a copy of such affidavit and with a notice in writing requiring immediate payment of such alleged debt. And whereas the said A. B. has commenced an action at law against the said C. D. for the recovery of the said alleged debt; and whereas the said C. D. hath requested the said E. F. and G. H. (as sureties for him) to join him in the above written bond, conditioned as hereinafter appearing, to which they have consented, and the said C. D. has given notice thereof to the said A. B.

Now the condition of the above-written obligation is such that if the said C. D., his executors, or administrators, shall pay such sum or sums of money to the said A. B., his executors, administrators, or assigns, as shall be recovered in the said action, or in any other action which may have been or shall hereafter be brought for the recovery of the said alleged debt, together with such damages and costs as shall be given in the same; or shall render himself to the custody of the gaoler of the court in which the said action or any other is or may be brought for the recovery of the said alleged debt, according to the practice of such court or courts, within such time and in such manner as the said court or courts or any judge thereof respectively shall direct, after judgment shall have been recovered in such action or actions, or shall obtain a legal discharge or release from the said alleged debt, then the present obligation shall be void, but otherwise shall stand and remain in full force and effect.

Signed, sealed, and delivered by the  
above-named C. D., E. F., and G. }  
H., in the presence of. }

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No. 7.

NOTICE OF GIVING SECURITY.

In the Court of Bankruptcy.

I hereby give you notice, That in pursuance of an affidavit made by you, sworn and filed in the

said court of Bankruptcy, at Basinghall-street, in the city of London, on the      day of      , 1840, alleging that C. D. of [name, residence and addition of the debtor], was justly and truly indebted unto you in the sum of £      for [here set out the same description of the debt as in the affidavit ante, p. 198], and also of due notice requiring immediate payment of such alleged debt, and in compliance with the act of parliament made and passed in the first and second years of the reign of Queen Victoria, commonly called the Act for abolishing Imprisonment for Debt, the said C. D., together with E. F. of      , in the county of      , and G. H. of      , in the county of      [*insert in these blanks the true residence and description of the sureties*], as his sureties, will, on the day of      , attend before the commissioner of bankruptcy, in rotation, at the court of Bankruptcy, Basinghall-street, London, at      o'clock, in the      noon of the same day, to enter into a bond for the due payment of such alleged debt, or of such sum or sums of money as shall or may be recovered in any action brought, or to be brought, against the said C. D. for the recovery thereof, together with such costs as shall be given in the same, or that the said C. D. shall render himself to the custody of the gaoler of the court in which such action shall or may be brought, according to the practice of such court, within such time and in such manner as the said court or any judge thereof shall direct, after such judgment shall have been recovered in such action.

Yours, &c.

F. J.

To Mr.  
of

Solicitor for the said A. B.

## No. 8.

**AFFIDAVIT OF SUFFICIENCY OF SURETIES  
IN BOND.**

In the Court of Bankruptcy (*i*).

E. F. of , in the county of [residence and addition of the surety], maketh oath and saith, that he is a housekeeper, residing at , and is worth property to the amount of £ over and above all his just debts; and this deponent further saith, that he is not bail in any suit or action in any of her Majesty's courts at Westminster, or otherwise; and this deponent further saith, that his property, to the amount of the said sum of £ , consists of [*here state the description and value of the property, and if it is real property, where the same is situated.*] And this deponent further saith, that he hath resided at his dwelling-house aforesaid, for

Sworn at the court of Bankruptcy, Basinghall-street, in the city of London, this day of

1840.

Before me.

## No. 9.

**AFFIDAVIT OF THE EXECUTION OF BOND.**

In the Court of Bankruptcy (*k*).

F. J. of [residence, &c., of deponent], maketh oath and saith that he was present on the day of , 1840, and did see C. D. of , E. F. of , and G. H. of [*here insert the names, residences, and descriptions of the debtor and his sureties*], severally duly sign, seal, and as their respective acts and deeds deliver a certain bond or obligation, bearing date the day of , whereby

(*i*) If the affidavit is not sworn in this court, this title must be altered.

(*k*) *Ibid.*

the said C. D. together with the said E. F. and G. H. became bound to A. B. of [residence, &c., of creditor], in the penal sum of £ with conditions thereunder written, and that the names [here insert the names of the debtor and sureties in the same manner as signed by them in executing the bond] set and subscribed against the seals of the said bond, as the parties executing the same, are of the proper respective handwritings of the said [the names of the debtor and the sureties in full], and that the name [the name of the witness set out in the same manner, as signed by him in executing the bond] set and subscribed to the said bond as the attesting witness thereto, is of the proper handwriting of this deponent.

Sworn at the court of Bankruptcy,  
Basinghall-street, in the city of  
London, this      day of  
one thousand eight hundred and  
forty.

Before me.

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No. 10.

AFFIDAVIT OF SERVICE OF NOTICE OF SECURITY.

In the Court of Bankruptcy (l).

F. J. of [residence, &c., of deponent], maketh oath and saith that he did on the      day of      , one thousand eight hundred and forty, serve C. D. of [residence of debtor], with a true copy of the notice hereunto annexed and marked      (m) by delivering the same to [here state the manner in which the notice was served, and on whom].

Sworn at the court of Bankruptcy,  
Basinghall-street, London, on the  
day of      , 1840.

Before me.

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(l) If sworn elsewhere this title must be altered.

(m) A copy of the notice, No. 5, ante, must be annexed to this affidavit.

## No. 11.

CONSENT AS TO THE SUFFICIENCY OF THE  
SURETIES.

On behalf of A. B. [*name of creditor*], I consent to the commissioner of the court of Bankruptcy in rotation approving of the bond under the 1 & 2 Victoria, c. 110, sec. 8, whereby C. D. of , E. F. of , and G. H. of [*names and residences of debtor and intended sureties*], are proposed to be bound to the said A. B. in the penal sum of . I, on behalf of the said A. B., being satisfied of the sufficiency of the said sureties, and do hereby dispense with the production of any affidavit before the said commissioner.

F. J.

Solicitor for the said A. B.

## No. 12.

## DEPOSITION AS TO ACT OF BANKRUPTCY.

In the Court of Bankruptcy.

Basinghall-street, London, day of ,  
1840.

In the matter of C. D. [*name of debtor*], against whom a fiat bearing date the day of 1840 [*here insert the correct date of the fiat*], hath been issued. Before Mr. Commissioner , O. P. of [*name and residence of deponent proving the act of bankruptcy*], being sworn and examined at the time and place above-mentioned, upon his oath saith that he is not in any manner a creditor of the said C. D. ; and this deponent further saith that he did on the day of [or that R. S. of , in the presence of the said O. P., did on the day of ,] personally serve the said C. D. with a true copy of an affidavit, filed in this honourable court on the said day of [*insert the correct day of filing*], (of which copy so served the annexed copy marked A is an office copy), and with a notice in writing

of which the annexed copy marked B is a true copy. And this deponent further saith that no bond under the provisions of the act of parliament, 1 & 2 Victoria, cap. 110, has been filed with the registrar of this honourable court, by the said C. D.

## No. 13.

**CERTIFICATE OF APPRAISEMENT WHEN MADE  
BY A PARTY NOT THE BROKER OF THE COURT.**

I certify that I have on the      day of      , 1840, been at the residence of the said prisoner [*or late residence of the said prisoner, or residence of the prisoner's family, as the case may be*], at      , and have then and there seen, examined, and valued each and every of the above-mentioned articles; and that the said sum of £      is a just and fair value of the same : I certify also, that there was on the same premises, besides the said articles, the following property : [*here add a description of such property (if any), and state the representations made concerning it by the insolvent, his family, or any person on the premises.*]

## No. 14.

**FORM OF RETAINER OF ATTORNEY.**

I, C. D. of [*name, late residence, and trade, &c., of the debtor*], do hereby retain F. J. [*name of the prisoner's attorney*], to act for me as my attorney in the court for Relief of Insolvent Debtors ; and I hereby declare that he is employed by me at my request.

Signed by me at      , on ]  
the      day of      , 1840. }      C. D.

Witness [*adding name and  
residence of witness.*]

*Acceptance of the above by the Attorney.*

I, F. J. of [*name and residence of the attorney*], hereby accept the above retainer. Signed by me on this      day of      , 1840.      F. J.

EMS OF NEW WRITS IN THE COMMON LAW  
COURTS,

UNDER 1 & 2 VICT. c. 110, s. 20 (*n*).

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No. 1.

*t of Elegit, upon a Judgment in the court of Queen's Bench, [or Common Pleas, or Exchequer of Pleas,] upon an Action of Assumpsit.*

CTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to the Sheriff(s) of ~~ting~~: Whereas A. B., lately in our court before *or in C. P., "before our justices;" or in the h., "before the barons of our Exchequer,"*] at Westminster, by the judgment of the same court, ~~vered~~ against C. D. £ ~~, which, in our court before us, [if in the C. P., or Exch. of~~ *zs, omit the words "before us,"*] were adjudged the said A. B. for his damages which he had ~~ained~~, as well on occasion of the not performing certain promises and undertakings then lately made by the said C. D. to the said A. B., as for his costs and charges by him about his suit in that behalf expended, whereof the said C. D. is convicted, appears to us of record; *[if in C. P., omit the h., "as appears to us of record;" or if in the h., then use these words, "as by inspecting the books of our said Exchequer, appears to us;"]*\* and

) *Ante*, p. 27, and note (*p*).

The writ must be directed, in all cases, to the proper sheriff of the county, or place, into which it issues; and if it should issue into either of the counties palatine, it must, according to the provisions of the 1 & 2 Vict. c. 110, s. 3, be directed "to the chancellor of the county palatine of Lancaster, or his deputy there, or to the chancellor of the county palatine of Durham, or his deputy there." See *ante*, p. 4.

afterwards † the said A. B. came into our said court before us, [or in C. P., "before our said justices;" or in the Exch., "before the barons of our said Exchequer;"] and, † according to the form of the statutes in such case made and provided, chose to be delivered to him all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough, and also all (p) such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said C. D., or any person in trust for him, was seised or possessed of, † on the      day of      , in the year of our Lord 184      , on which day the judgment aforesaid was entered up, or at any time afterwards, or over which the said C. D., on the said      day of      , [the day to be inserted here is that on which the judgment was entered up], or at any time afterwards, had any disposing power § which he might, without the assent of any other person, exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents, and hereditaments, respectively, according to the nature and tenure thereof, to him and to his assigns, § according to the form of the said statutes, until the damages aforesaid, together with interest upon the said sum of £      , at the rate of four pounds per centum per annum, from the      day of      , in the year of our Lord 184      , [the day on which the judgment was entered up, or in case the judgment was entered up prior to the 1st of October, 1838, say, "from the 1st day of October, in the year of our Lord 1838" (q)], shall have been levied. Therefore we command you, || that without delay, you cause to be delivered to the said A. B., by a reasonable price and extent, all the

(p) See ante, p. 17.

(q) See ante, sec. 17, p. 24.

goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough; and also all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure (*r*) in your bailiwick, as the said C. D., or any person in trust for him, was seised or possessed of, || on the said      day of      , 184   , [*the day on which the judgment was entered up,*] or at any time afterwards, or over which the said C. D., on the said      day of      , 184   , [*the day on which the judgment was entered up,*] or at any time afterwards, ¶ had any disposing power which he might, without the assent of any other person, exercise for his own benefit, to hold the said goods and chattels to the said A. B., as his proper goods and chattels; and also to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof (*s*), to him and to his assigns, ¶ until the damages aforesaid, together with interest as aforesaid, shall have been levied.\*\* And in what manner you shall have executed this our writ, make appear to us, [*or in C. P., "to our justices;" or in Exch., "to the barons of our said Exchequer,"*] at Westminster, immediately after the execution thereof, [*or "on      ,"(t)*] under your seal, and the seals of those by whose oath you shall make the said extent and appraisement, and have there *then* this writ, [*if in C. P., or Exch., omit the word "then."*] Witness [*name of chief justice or baron*], at Westminster, the      day of      , in the year of our Lord 184   .

[*Indorse this Writ as the fieri facias, post, 193, omitting the defendant's addition and place of abode.*]

(r) See *anti*, sec. 11, p. 17.

(s) *Ibid.*

(t) By a note at the end of the forms of the new Writs of *capias ad satisfaciendum* issued in pursuance of the general rule Hil. T. 3 Vic., all writs of execution *may* now be made returnable on a day certain in term: see post, 200, note (c).

## No. 2.

*Writ of Elegit, on a Rule made in the court of Queen's Bench, [or Common Pleas, or Exchequer of Pleas,] for payment of money.*

VICTORIA, &c. [commence as in form, No. 1, ante, p. 183.] Whereas, lately in our court, before us [or in C. P., "before our Justices;" or in the Exch., "before the barons of our Exchequer,"] at Westminster, by a rule of the said court, entitled, &c. [setting out the title of the rule as the case may be] the sum of £ was, by the said court, ordered to be paid by C. D. to A. B.,\* and afterwards, &c. [as in form, No. 1, ante, p. 184, from + to +,] on the day of , in the year of our Lord 184 , on which day the said rule was made, or at any time afterwards, or over which the said C. D. on the said day of , [the day on which the rule was made,] or at any time afterwards, had any disposing power, &c. [as in the form, No. 1, ante, p. 184, from § to §,] until the said sum of £ , together with interest upon the said sum £ , at the rate of four pounds per centum per annum, from the said day of , in the year of our Lord, 184 , [the day on which the rule was made, or in case it was made prior to the 1st of October, 1838, say "from the 1st day of October, in the year of our Lord 1838,"] shall have been levied. Therefore we command you, &c. [as in form, No. 1, ante, p. 184, from || to ||,] on the said day of , [the day on which the rule was made,] or at any time afterwards, or over which the said C. D. on the said day of , [the day on which the rule was made,] or at any time afterwards, &c., [as in the form, No. 1, ante, p. 185, from ¶ to ¶,] until the said sum of £ , together with interest as aforesaid, shall have been levied, [conclude as in form, No. 1, ante, p. 185, from \*\* to the end.] [Indorse this writ as post, 193, omitting the defendant's addition and place of abode.]

## No. 3.

*Writ of Elegit, on a Rule made in the court of Queen's Bench, [or Common Pleas, or Exchequer of Pleas,] for Payment of Money and Costs.*

VICTORIA, &c. [commence as in form, No. 2, antè, p. 186, to the \*], together with the costs of the said rule, which said costs were afterwards, on the day of , taxed and allowed by the said court at the sum of £ . And afterwards, &c., [as in form, No. 1, antè, p. 184, from + to +,] on the day of , in the year of our Lord 184 , [the day on which the costs of the rule were taxed,] or at any time afterwards, or over which the said C. D., on the said day of , [the day on which the costs of the rule were taxed,] or at any time afterwards, had any disposing power, &c., [as in form, No. 1, antè, p. 184, from § to §,] until the said two several sums of £ and £ , together with interest upon the said two several sums of £ and £ , at the rate of four pounds per centum per annum from the said day of , [the day on which the costs of the rule were taxed, or in case that day was prior to the 1st October, 1838, say, "from the 1st day of October, in the year of our Lord 1838,"] shall have been levied. Therefore we command you, &c., [as in form, No. 1, antè, p. 184, from || to ||,] on the said day of , [the day on which the costs of the rule were taxed,] or at any time afterwards, or over which the said C. D., on the said day of , [the day on which the costs of the rule were taxed,] or at \* any time afterwards, &c., [as in form, No. 1, antè, p. 185, from ¶ to ¶,] until the said two several sums of £ and £ , together with interest as aforesaid, shall have been levied. [conclude as in the form, No. 1, antè, p. 185, from \*\* to the end.]

[Indorse this writ as post, 193, omitting the defendant's addition and place of abode.]

## No. 4.

*Writ of Elegit, on a Judgment of an inferior court in an Action of Assumpsit removed into the court of Queen's Bench, [or Common Pleas, or Exchequer of Pleas.]*

VICTORIA, &c., [commence as in form, No. 1, ante, p. 183.] Whereas A. B., lately in [insert the style of the inferior court], by the judgment of the said court, recovered against C. D. the sum of £ , which in the said court were adjudged, &c., [as in form, No. 1, ante, p. 183, from \* to \*] and whereas the said judgment was afterwards, on the day of , in the year of our Lord 184 , removed \* into our court before us, [or in C. P., "before our justices;" or in the Exch., "before the barons of our Exchequer,"] at Westminster, by virtue of an order of our said court before us, [or in C. P., "before our said Justices;" or in the Exch., "before the barons of our said Exchequer,"] at Westminster, [or "of ", one of the justices, "or "barons") of our said court at Westminster," as the case may be,] in pursuance of the statute in that case made and provided,\* and the costs attendant upon the application for the said order and upon the said removal were afterwards, on the day of , in the year of our Lord 184 , taxed and allowed by our said court, before us [or in C. P., "before our said justices;" or in the Exch., "before the barons of our said Exchequer,"] at Westminster, at the sum of £ . And afterwards the said A. B. came into our said court before us, [or in C. P., "before our justices;" or in the Exch., "before the barons of our Exchequer,"] at Westminster, and &c., [as in the form, No. 1, ante, p. 184, from † to †,] on the said day of , in the year of our Lord 184 , aforesaid, [the day on which the costs of removing the judgment were taxed,] or at any time afterwards, or over

which the said C. D. on the said      day of      ,  
 [the day on which the costs of removing the judgment were taxed,] or at any time afterwards, had  
 any disposing power, &c., [as in the form, No. 1,  
 ante, p. 184, from § to §.] until the damages aforesaid, and the said costs so taxed and allowed by our  
 said court before us, [or in C. P., "before our said  
 justices;" or in the Exch., "before the barons of  
 our said Exchequer,"] at Westminster as aforesaid,  
 together with interest upon the said two several  
 sums of £      and £      , at the rate of  
 four pounds per centum per annum, from the  
 day of      , aforesaid, [the day on which the  
 costs of removing the judgment were taxed,] shall  
 have been levied. Therefore we command you, &c.,  
 [as in the form, No. 1, ante, p. 184, from || to ||,]  
 on the said      day of      , [the day on  
 which the costs of removing the judgment were  
 taxed,] or at any time afterwards, or over which the  
 said C. D., on the said      day of      ,  
 [the day on which the costs of removing the judgment  
 were taxed,] or at any time afterwards, &c.,  
 [as in the form, No. 1, ante, p. 185, from ¶ to ¶,]  
 until the damages aforesaid, and the said costs so  
 taxed and allowed by our said court before us, [or in  
 C. P., "before our said justices;" or in the Exch.,  
 "before the barons of our said Exchequer,"] at  
 Westminster as aforesaid, and interest as aforesaid,  
 shall have been levied. [conclude as in the form,  
 No. 1, ante, p. 185, from \*\* to the end.]

[Indorse this writ as post, 193, omitting the de-  
 fendant's addition and place of abode.]

## No. 5.

*Writ of Elegit, on an order for payment of money,  
 made in an inferior court, and removed into the  
 court of Queen's Bench, [or Common Pleas, or  
 Exchequer of Pleas.]*

VICTORIA, &c., [commence as in form, No. 1, ante,

p. 183.] Whereas, lately in [insert the style of the inferior court], by a rule of the said court entitled, &c., [as the case may be,] the sum of £ was, by the said court, ordered to be paid by C. D. to A. B.,\* and whereas† the said rule was afterwards, on the day of , in the year of our Lord 184 , removed, &c., [as in the form, No. 4, ante, p. 188, from \* to \*,] and the costs attendant upon the application for the said last-mentioned order, and upon the said removal, were afterwards, on the day of , in the year of our Lord, 184 , taxed and allowed† in our said court, before us, [or in C. P., "before our said justices;" or in the Exch., "before the barons of our said Exchequer,"] at Westminster, at the sum of £ , and afterwards the said A. B. came into our said court before us, [or in C. P., "before our said justices;" or in the Exch., "before the barons of our said Exchequer,"] at Westminster,‡ and, &c., [as in the form, No. 1, ante, p. 184, from † to †,] on the said day of , in the year of our Lord 184 , [the day on which the costs of removing the rule of the inferior court into the court of Q. B., C. P., or Exch. of Pleas were taxed,] or at any time afterwards, or over which the said C. D. on the said day of , [the day on which the costs of removing the rule of the inferior court into the court of Q. B., C. P., or Exch. of Pleas were taxed,] or at any time afterwards, had any disposing power, &c., [as in the form, No. 1, ante, p. 184, from § to §,] until the said‡ two several sums of £ and £ , together with interest on the said two several sums of £ and £ , at the rate of four pounds per centum per annum, from the said day of , [the day on which the costs of removing the rule of the inferior court into the court of Q. B., C. P., or Exch. of Pleas were taxed,] shall have been levied. Therefore we command you, &c., [as in the form, No. 1, ante, p. 184, from || to ||,] on the said day of , [the day on which

*the costs of removing the rule of the inferior court into the court of Q. B., C. P., or Exch. of Pleas, were taxed,] or at any time afterwards, or over which the said C. D., on the      day of      , [the day on which the costs of removing the rule of the inferior court into the court of Q. B., C. P., or Exch. of Pleas were taxed,] or at, &c., [conclude as in the form, No. 3, ante, p. 187, from \* to the end.]*

*[Indorse this writ as post, 193, omitting the defendant's addition and place of abode.]*

## No. 6.

*Writ of Elegit, on a rule for payment of money and costs, made in an inferior court, and removed into Queen's Bench, [or Common Pleas, or Exchequer of Pleas.]*

VICTORIA, &c., [commence as in form, No. 5, ante, p. 189, to the \*], together with the costs of the said rule, which said costs were afterwards, on the      day of      , in the year of our Lord 184      , taxed and allowed by the said court at the sum of £      , and whereas, &c., [as in the form, No. 5, ante, p. 190, from † to †,] in our said court, before us, [or in C. P., "before our said justices;" or in the Exch., "before the barons of our said Exchequer,"] at the sum of £      , and afterwards the said A. B. came into our said court before us, [or in C. P., "before our said justices;" or in the Exch., "before the barons of our said Exchequer,"] at Westminster, &c., [as in the form, No. 5, ante, p. 190, from † to †,] three several sums of £      , and £      , and £      , together with interest upon the said three several sums of £      , and £      , and £      , at the rate of four pounds per centum per annum, from the said      day of [the day on which the costs of removing the rule of the inferior court into the

*court of Q. B., C. P., or Exch. of Pleas were taxed,] shall have been levied. Therefore we command you, &c., [as in the form, No. 1, ante, p. 184, from || to ||.] on the said      day of      , [the day on which the costs of removing the rule of the inferior court into the Court of Q. B., C. P., or Exch. of Pleas were taxed,] or at any time afterwards, or over which the said C. D., on the said      day of      , [the day on which the costs of removing the rule of the inferior court into the Court of Q. B., C. P., or Exch. of Pleas were taxed,] or at any time afterwards, &c., [as in the form, No. 1, ante, p. 185, from ¶ to ¶,] until the said three several sums of £      , and £      , and £      , together with interest as aforesaid, shall have been levied. [conclude as in the form, No. 1, ante, p. 185, from \*\* to the end.]*

[Indorse this writ as post, 193, omitting the defendant's addition and place of abode.]

#### No. 7.

*Writ of Fieri Facias, on a judgment in the court of Queen's Bench, [or Common Pleas, or Exchequer of Pleas,] in an action of assumpsit.*

VICTORIA, &c. [commence as form, No. 1, ante, p. 183.] We command you that [if in the Exch. add these words, "you omit not by reason of any liberty of your county, but that you enter the same and"] of the goods and chattels of C. D. in your bailiwick you cause to be made £      , which A. B.\* lately in our court before us, [or in C. P., "before our justices;" or in the Exch., "before the barons of our Exchequer,"] at Westminster, recovered against him for his damages which he had sustained,† as well on occasion of the not performing certain promises and undertakings then lately made by the said C. D. to the said A. B., as for his costs and charges by him about his suit in that behalf ex-

pended, whereof the said C. D. is convicted as appears to us of record, [if in C. P., omit "as appears to us of record," or, if in the Exch. "as by inspecting the rolls of our said Exchequer appears to us,"] † together with interest upon the said sum of £ at the rate of four pounds *per centum per annum*, from the      day of      , in the year of our Lord 184 , [the day on which the judgment was entered up, or if done so prior to the 1st of October, 1838, say, "from the 1st day of October, in the year of our Lord 1838,"] on which day the judgment aforesaid was entered up, [but if the judgment was entered up prior to 1st October, 1838, then omit the words "on which day the judgment aforesaid was entered up,"] and have that money with such interest as aforesaid, before us [or, in C. P. "before our Justices," or, in the Exch. "before the barons of our said Exchequer,"] at Westminster, immediately after the execution hereof, [or, "on      " (u) ] to be rendered to the said A. B. for his damages and interest, as aforesaid, [or, if in the Exch. "to be then and there paid to the said A. B. or his Attorney in this behalf,"] and that you do † all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf(v); and in what manner you shall have executed this our Writ make appear to us [or, in C. P. "to our Justices," or, in the Exch. "to the barons of our said Exchequer,"] at Westminster, immediately after the execution thereof [or, "on the said      " (w) ] and have there then [if in the C. P. or Exch. omit the word "then,"] this Writ. Witness, [name of chief justice or chief baron, as the case may be] at Westminster, on the      day of      , in the year of our Lord 184 .

[Indorse the writ thus:—"Levy the whole [or, "levy £      "] and interest, at the rate of four pounds *per centum*, from      184 , [the time when

(u) See note (t) *ante*, p. 185.

(v) See *ante*, sec. 12. p. 18, and notes.

(w) See *ante*, p. 185, note (t).

*the judgment was entered up, or if entered up before the 1st of October, 1838, then from that day,] besides sheriff's poundage, officer's fees, and all other incidental expenses (x). The defendant is [insert defendant's occupation,] and resides at [setting forth the No. of house and street where defendant resides.] F. J. (Temple,) plaintiff's attorney, the      day of               , in the year of our Lord 1840."]*

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### No. 8.

*Writ of Fieri Facias, on an order of the Court of Queen's Bench [or, Common Pleas, or, Exchequer of Pleas,] for payment of money.*

VICTORIA, &c., [commence as form, No. 1, ante, p. 183.] We command you, that [if in the Exchequer, add these words, "you omit not by reason of any liberty of your County, but that you enter the same and"] of the goods and chattels of C. D. in your bailiwick, you cause to be made £ , which lately in our court before us [or, in C. P. "before our Justices," or, in the Exch. "before the barons of our Exchequer,"] at Westminster, by a rule of our said Court, entitled, &c. [as the case may be] were, by the said Court ordered to be paid by the said C. D. to A. B., \* and that of the said goods and chattels of the said C. D. in your bailiwick you further cause to be made interest upon the said sum of £ , at the rate of four pounds per centum per annum from the      day of      , in the year of our Lord 184 , [the day on which the rule was made, or if it were made prior to the 1st October, 1838, say, "from the 1st day of October, in the year of our Lord 1838,"] on which day the said rule was made, [if however the rule was made

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(x) As to the sheriff's right under this writ to levy poundage, fees, and expenses of execution, see 1 Chit. Arch. Pract. 7th Ed. p. 414.

*prior to 1st October, 1838, then omit the words "on which day the said rule was made,"] and have that money, together with such interest as aforesaid, before us [or, in C. P. "before our Justices," or, in the Exch. "before the barons of our Exchequer,"] at Westminster, immediately after the execution hereof, [or, "on \_\_\_\_\_" (y)] to be rendered [or, if in the Exch. "to be then and there paid,"] to the aid A. B. for the said sum of money so ordered to be paid by the said C. D. to the said A. B. and for interest as aforesaid, and that you do, &c., [conclude as form, No. 7, ante, p. 193, from † to the nd.]*

[*Indorse the writ as ante, p. 193, No. 7.*]

### No. 9.

*Writ of Fieri Facias, on an order of the Court of Queen's Bench [or, Common Pleas, or, Exchequer of Pleas,] for payment of money and costs.*

VICTORIA, &c., [commence as form, No. 8, ante, 194, to the \*] together with the costs of the said suit, which said costs were afterwards, on the day of , in the year of our Lord 184 , taxed id allowed by our said court at the sum of £ , id that of the said goods and chattels of the said C. D. in your bailiwick you further cause to be added interest upon the said two several sums of , and £ , at the rate of four pounds per centum per annum, from the said day of , in the year of our Lord 184 , [the day on which the costs of the rule were taxed, or if that were prior to the 1st of October, 1838, say, "from the 1st day of October, in the year of our Lord 1838,"] and have that money, together with such interest as aforesaid, before us [or, in C. P. "before our Justices," or, in the Exch. "before the barons of our Exchequer,"] at Westminster, immediately

(y) See note (t) ante, p. 185.

after the execution hereof, [or, "on         "]<sup>(z)</sup>  
 to be rendered [or, if in the Exch. "to be then and  
 there paid,"] to the said A. B. for the said sum of  
 money so ordered to be paid by the said C. D. to  
 the said A. B. and for the costs and interest as afore-  
 said, and that you do, &c., [conclude as form, No. 7,  
 ante, p. 193, from † to the end.]

[Indorse the writ as ante, p. 193, No. 7.]

### No. 10.

*Writ of Fieri Facias, on a judgment of an inferior Court in an action of assumpsit removed into the Court of Queen's Bench, [or, Common Pleas, or, Exchequer of Pleas.]*

VICTORIA, &c., [commence as form, No. 7, ante, p. 192, to the\*] lately in [insert the style of the inferior court] by the judgment of the said Court, recovered against the said C. D. for his damages, which he had sustained, &c., [as in form, No. 7, ante, p. 192, from † to †] and which judgment was †† afterwards, on the day of         , in the year of our Lord 184         , removed into our court before us [or, in C. P. "before our Justices," or, in the Exch., "before the barons of our Exchequer,"] at Westminster, by virtue of an order of our said court before us [or, in C. P. "before our said Justices," or, in the Exch. "before the barons of our said Exchequer,"] at Westminster, [or, "of         , one of the justices" (or "barons") of our said court before us, at Westminster, as the case may be,] in pursuance of the statute in such case made and provided, †† and the costs attendant upon the application for the said order, † and upon the said removal, were, on the         day of         , in the year of our Lord 184         , taxed and allowed by our said Court before us [or, in C. P. "before our said Justices," or, in the Exch. "before the barons of our said Exchequer,"] at Westminster, at the sum

(z) See note (t) ante, p. 185.

of £ : And we further command you, that of the said goods and chattels of the said C. D. in your bailiwick, you further cause to be made † the said sum of £ , [*the costs attendant upon the removal of the judgment out of the inferior court into the Court of Q. B., C. P., or Exch. of Pleas,*] together with interest on the said two several sums of £ and £ , at the rate of four pounds *per centum per annum* from the said day of , in the year of our Lord 184 : [*the day on which the costs of the removal were taxed*] and that you have that money, with such interest as aforesaid, before us [*or, in C. P. "before our said Justices," or, in the Exch. "before the barons of our said Exchequer,"*] at Westminster, immediately after the execution hereof, [*or, "on "(zz) ] to be rendered [*or, in the Exch. "to be then and there paid*"*] to the said A. B. for his damages aforesaid, and for costs and interest as aforesaid : and that you do, &c., [*conclude as form No. 7, antè, p. 193, from † to the end.*] [*Indorse the writ as antè, p. 193, No. 7.*]

## No. 11.

*Writ of Fieri Facias, on an order for payment of money made in an inferior Court, and removed into the Court of Queen's Bench, [or, Common Pleas, or, Exchequer of Pleas.]*

VICTORIA, &c., [*commence as in form, No. 1, antè, p. 183.*] We command you, that of the goods and chattels of C. D., in your bailiwick, you cause to be made £ , which lately in [*insert the style of the inferior Court*] by a rule of the said Court, entitled, &c., [*as the case may be*] were by the said Court ordered to be paid by the said C. D. to A. B., \* and which † rule was, &c., [*as in form, No. 10, antè, p. 196, from †† to ††*], and the costs attendant upon

(zz) See *antè*, p. 185, note (t.).

the application for the said last mentioned order, &c., [as in form, No. 10, ante, p. 196, from † to †] the said sum of £ , [the costs of removing the rule of the inferior Court into the Court of Q. B., C. P., or Exch. of Pleas] together with + interest on the said two several sums of £ and £ , at the rate of four pounds per centum per annum from the said day of [the day on which the costs of removing the rule of the inferior Court into the Court of Q. B., C. P., or Exch. of Pleas were taxed] and that you have that money, † with such interest as aforesaid, before us [or, in C. P. "before our said Justices," or, in the Exch. "before the barons of our said Exchequer,"] at Westminster, immediately after the execution hereof, [or, "on " (a) to be rendered [or, in the Exch. "to be then and there paid"] to the said A. B. for the said monies by the said rule first above mentioned ordered to be paid by the said C. D. to the said A. B., and for costs and interest as aforesaid; and that you do, &c., [conclude as form, No. 7, ante, p. 193, from † to the end.]

[Indorse the writ as ante, p. 193, No. 7.]

### No. 12.

*Writ of Fieri Facias, on an order for payment of money and costs made in an inferior Court, and removed into the Court of Queen's Bench, [or, Common Pleas, or, Exchequer of Pleas.]*

VICTORIA, &c., [commence as in form, No. 11, ante, p. 197, to the \*] and also £ for the costs of the said rule by the said Court also ordered to be paid by the said C. D. to the said A. B., which, &c., [as in form, No. 11, ante, p. 197, from † to †] the interest on the said three several sums of £ , and £ , and £ , at the rate of four pounds per centum per annum, from the said day of ,

(a) See ante, p. 185, note (t).

in the year of our Lord 184<sup>o</sup>, [the day on which  
the costs of removing the rule from the inferior  
Court into the Court of Q. B., C. P., or Exch. of  
Pleas, were taxed] and that you have that money,  
re., [conclude as form, No. 11, ante, p. 198, from  
to the end.]

[Indorse the writ as ante, p. 193, No. 7.]

### No. 13.

*Writ of Capias ad Satisfaciendum, on a judgment  
in the Court of Queen's Bench, [or, Common  
Pleas, or, Exchequer of Pleas,] in an Action of  
Assumpsit (b).*

VICTORIA, &c., [commence as form, No. 1, ante,  
183.] We command you that you [if in the

(b) By the Reg. Gen. Hil. T. 3 Vict. 1840, *It is ordered*,  
at the following forms of writs, framed by the judges pur-  
tant to the statute 1 & 2 Victoria, c. 110, s. 20, be used  
om and after the first day of next Easter Term in the cases  
which they are applicable, with such alterations as the na-  
re of the action, the description of the court in which the  
tion is depending, the character of the parties, or the cir-  
umstances of the case, may render necessary; and that in all  
es in which the judgment is for a penalty, and the plaintiff  
eks to obtain interest, there shall be a memorandum on the  
ick, or at the foot of the writ, directing the sheriff to levy  
s amount of the sum of money really due and secured by the  
malty, and of the damages and costs recovered and interest  
areon, at the rate of four pounds *per centum per annum* from  
e time when the judgment was entered up, or if it was entered  
before the first day of October, 1838, then from that day;  
id, that in the cases in which the amount for which the judg-  
ent has been given is less than the amount of the sum of  
oney really due and secured by the penalty and the damages  
d costs recovered, and the interest thereon calculated as  
ressaid, it shall be stated in the body of the writ, that the  
eriff is to levy interest at the rate of four pounds *per centum*  
*per annum* from the \_\_\_\_\_ day of \_\_\_\_\_, and on the  
ick, or at the foot of the writ, there shall be a memorandum  
above directed; and that in the case of an assessment of  
ther damages under a writ of *scire facias* pursuant to the  
tute of 8 & 9 William 3, it shall be stated in the body of  
e writ of execution, that the sheriff is to levy interest on the

*Exch. add these words,* “ omit not by reason of any liberty of your county, but that you enter the same and ”] take C. D., if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us [or, in C. P. “ before our justices,” or, in the Exch. “ before the barons of our Exchequer,”] at Westminster, immediately after the execution hereof, [or “ on ”(c)] to satisfy A. B. £ \* which the said A. B. lately in our court before us, [or, in C. P. “ before our justices,” or, in the Exch. “ before the barons of our Exchequer,”] at Westminster, recovered against the said C. D. for his damages which he had sustained, as well on occasion of the not performing certain promises and undertakings [as the case may be] then lately made by the said C. D. to the said A. B., as for his costs and charges by him about his suit in that behalf expended; whereof the said C. D. is convicted, as appears to us of record, [if in C. P., omit, “ as appears to us of record ;” or, if in the Exch. insert in lieu of those words, “ as by inspecting the rolls of our said Exchequer appears to us,”] together with interest upon the said sum of £ , at the rate of four pounds *per centum per annum* from the day of , in the year of our Lord 184 , [the day on which the judgment was entered up, or if entered up prior to the 1st of October, 1838, say, “ from the 1st day of October, in the year of our Lord 1838,” omitting the following words, “ on which day the judgment aforesaid was entered up,”] on which day the judgment aforesaid was entered up, and have there then

damages assessed and costs taxed in that behalf at the rate of four pounds *per centum per annum* from the day on which execution was awarded, unless execution was awarded before the first of October, 1838, and in that case from that day:—*But it is further ordered*, that any variance not being in matter of substance, shall not affect the validity of the writs sued out.

(c) This and all other writs of execution may be made returnable on a day certain in term.

[*or, if in C. P., or Exch. omit the word "then,"*] this writ.

Witness, [*name of chief justice or chief baron, as the case may be,*] at Westminster, on the day of , in the year of our Lord 184 .

[*Indorse the writ thus: "Levy the whole [or, "levy £ ,"] and interest at the rate of four pounds per centum from , 184 , [the time when the judgment was entered up, or if entered up before the 1st of October, 1838, then from that day,] besides sheriff's poundage, officers' fees, and all other incidental expenses (d). The defendant is [here insert defendant's addition, unless the writ issue from the C. P., when it may be omitted (e),] and resides at [insert a full description of defendant's residence, stating No. of house and street,] F. J. (Temple,) plaintiff's attorney, the day of , in the year of our Lord 1840."*

#### No. 14.

*Writ of Capias ad Satisfaciendum, on an order of the Court of Queen's Bench, [or, Common Pleas, or, Exchequer of Pleas,] for payment of money.*

VICTORIA, &c., [*commence as form, No. 13, ante, p. 199, to the \**] which lately in our Court before us, [*or, in C. P. "before our Justices," or, in the Exch. "before the barons of our Exchequer,"*] at Westminster, by a rule of our said Court, entitled, &c., [*as the case may be,*] were by the said Court ordered to be paid by the said C. D. to the said A. B., and further to satisfy the said A. B. interest

(d) As to the sheriff's right under this writ to levy poundage, officer's fees and other expenses, see 1 Chit. Arch. Prac. 7th Ed. p. 416; and see *Hely v. Rackett*, 3 Jurist, 1196.

(e) In the common pleas, it is not necessary that defendant's addition should be indorsed on a writ of *ca sa*, *Brown v. Hudson*, 6 Bing. N. C. 152; 8 Dowl. P. C. 4, S. C.

upon the said sum of £ , at the rate of four pounds *per centum per annum* from the day of , in the year of our Lord 184 , [*the day on which the rule was made, or if it were made prior to the 1st of October, 1838, say, "from the 1st day of October, in the year of our Lord 1838," omitting the following words, "on which day the said rule was made,"*] on which day the said rule was made, and have there then [*if in the C. P. or Exch. omit the word "then,"*] this writ.

Witness, &c., [as form, No. 13, ante, p. 201.]  
[Indorse this writ as ante, p. 201, No. 13.]

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## No. 15.

*Writ of Capias ad Satisfaciendum, on an order of the Court of Queen's Bench, [or, Common Pleas, or, Exchequer of Pleas,] for payment of money and costs.*

VICTORIA, &c., [commence as form, No. 13, ante, p. 199, to the \* ,] which lately in our Court before us, [or, in C. P. "before our Justices," or, in the Exch. "before the barons of our Exchequer,"] at Westminster, by a rule of our said Court, entitled, &c., [as the case may be,] were by the said Court ordered to be paid by the said C. D. to the said A. B., together with the costs of the said rule, which said costs were afterwards on the day of , in the year of our Lord 184 , taxed and allowed by our said Court, at the sum of £ , and further to satisfy the said C. D. the said sum of £ , [*the amount of the taxed costs,*] together with interest upon the said two several sums of £ and £ , at the rate of four pounds *per centum per annum*, from the said day of , in the year of our Lord 184 , [*the day on which the costs of the rule were taxed, or if that were prior to the 1st of October, 1838, say, "from the 1st day of October,*

in the year of our Lord 1838,"] and have there  
then [if in the C. P. or Exch. omit the word  
"then,"] this writ.

Witness, &c., [as form No. 13, ante, p. 201.]  
[Indorse this writ as ante, p. 201, No. 13.]

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### No. 16.

*Writ of Capias ad Satisfaciendum, on a judgment  
in an inferior Court in an action of Assumpsit,  
removed into the Court of Queen's Bench, [or,  
Common Pleas, or, Exchequer of Pleas.]*

VICTORIA, &c., [commence as form, No. 13, ante,  
p. 199, to the \*], which the said A. B. lately in  
[insert the style of the inferior Court,] by the  
judgment of the said Court recovered against the  
said C. D. for his damages which he had sustained,  
as well on occasion of the not performing certain  
promises and undertakings then lately made by the  
said C. D. to the said A. B., as for his costs and  
charges by him about his suit in that behalf ex-  
pended, whereof the said C. D. is convicted as ap-  
pears to us of record, [if in C. P. omit "as appears  
to us of record," or, if in the Exch. insert in lieu of  
those words, "as by inspecting the rolls of our said  
Exchequer appears to us,"] and which judgment was  
afterwards on the      day of      , in the year of our  
Lord 184   , removed into our Court before us, (or, in  
C. P. "before our Justices," or, in the Exch. "be-  
fore the barons of our Exchequer,") at Westminster,  
by virtue of an order of our said Court before us [or,  
in C. P. "before our said Justices;" or, in the Exch.  
"before the barons of our said Exchequer,"] at  
Westminster [or, "of      , one of the justices  
(or "barons") of our said court before us at West-  
minster," as the case may be,] in pursuance of the  
statute in such case made and provided, and the  
costs attendant upon the application for the said

order, and upon the said removal, were on the day of , in the year of our Lord 184 , taxed and allowed by our said Court before us [or, in C. P. "before our said Justices," or, in the Exch. "before the barons of our said Exchequer,"] at Westminster, at the sum of £ , and further to satisfy the said A. B. the said sum of £ , [the costs attendant upon the removal of the judgment out of the inferior Court into the Court of Queen's Bench, or, C. P., or, Exch. of Pleas,] together with interest upon the said two several sums of £ and £ , at the rate of four pounds per centum per annum from the said day of , in the year of our Lord 184 , [the day on which the costs of the removal were taxed,] and have there then [if in the C. P. or Exch. omit the word "then"] this writ.

Witness, &c., [as form, No. 13, ante, p. 201.]  
[Indorse this writ as ante, p. 201, No. 13.]

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### No. 17.

*Writ of Capias ad Satisfiendum, on an order of an inferior Court for payment of money, removed into the Court of Queen's Bench, [or, Common Pleas, or, Exchequer of Pleas.]*

VICTORIA, &c., [commence as form, No. 13, ante, p. 199, to the \*] which lately in [insert the style of the inferior Court,] by a rule of the said Court, entitled, &c., [as the case may be,] were by the said Court ordered to be paid by the said C. D. to the said A. B., and which rule was afterwards on the day of , in the year of our Lord 184 , removed into our Court before us [or, in C. P. "before our Justices," or, in the Exch. "before the barons of our Exchequer,"] at Westminster, by an order of our said Court before us [or, in the C. P. "before our said Justices," or, in the Exch. "before the barons of our said Exchequer,"] at Westmin-

ster [or, "of       , one of the justices (or "barons") of our said court before us at Westminster," *as the case may be,*] in pursuance of the statute in such case made and provided, and the costs attendant upon the application for the said last-mentioned order, and upon the said removal, were on the day of       , in the year of our Lord 184   , taxed and allowed by our said Court before us [or, *in the C. P.* "before our said Justices," or, *in the Exch.* "before the barons of our said Exchequer,"] at Westminster, at the sum of £       , and also to satisfy the said A. B. the said sum of £       , [*the costs of removing the rule of the inferior Court into the Court of Queen's Bench, or C. P., or Exch. of Pleas,*] together with interest on the said two several sums of £       , and £       , at the rate of four pounds *per centum per annum*, from the said       day of       , in the year of our Lord 184   , [*the day on which the costs of removal were taxed,*] and have there then [if in the C. P. or Exch. omit the word "then"] this writ.

Witness, &c., [as form, No. 13, *antè*, p. 201.]  
[Indorse this writ as *antè*, p. 201, No. 13.]

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### No. 18.

*Writ of Capias ad Satisfaciendum, on an order of an inferior Court for payment of a sum of money and costs, removed into the Court of Queen's Bench, [or, Common Pleas, or, Exchequer of Pleas.]*

VICTORIA, &c., [commence as form, No. 13, *antè*, p. 199, to the \*] which lately in [insert the style of the inferior Court,] by a rule of the said Court, entitled &c., [*as the case may be,*] were by the said Court ordered to be paid by the said C. D. to the said A. B., and also £       , for the costs of the said rule, by the said Court also ordered to be paid by the said C. D. to the said A. B., which said

rule was afterwards on the      day of      , in the year of our Lord 184   , removed into our Court before us [*or, in C. P.* “before our Justices,” *or, in the Exch.* “before the barons of our Exchequer,”] at Westminster, by an order of our said Court before us [*or, in the C. P.* “before our said Justices,” *or, in the Exch.* “before the barons of our said Exchequer,”] at Westminster [*or, “of*   , one of the justices (*or* “barons”) of our said court before us at Westminster,” *as the case may be,*] in pursuance of the statute in such case made and provided, and the costs attendant upon the application for the said last-mentioned order, and upon the said removal, were on the      day of      , in the year of our Lord 184   , taxed and allowed by our said Court before us [*or, in the C. P.* “before our said Justices,” *or, in the Exch.* “before the barons of our said Exchequer,”] at Westminster, at the sum of £      , and also to satisfy the said A. B. the said sum of £      , [*the costs of removing the rule from the inferior Court into the Court of Queen's Bench, or C. P., or Exch. of Pleas,*] together with interest on the said three sums of £      , and £      , and £      , at the rate of four pounds *per centum per annum* from the      day of      , in the year of our Lord 184   , [*the day on which the costs of removing the rule from the inferior Court were taxed,*] and have there then [*if in the C. P. or Exch. omit the word “then”*] this writ.

Witness, &c., [*as form, No. 13, ante, p. 201.*]

[*Indorse this writ as ante, p. 201, No. 13.*]

NEW FORMS OF WRITS IN THE COURTS OF  
CHANCERY,

IN PURSUANCE OF 1 & 2 VICT. C. 110 (f).

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No. 1.

*Writ of Fieri Facias, on a decree or order of the Court of Chancery, [or, Exchequer in Equity,] for payment of money (g).*

VICTORIA, &c., [commence as form, No. 1, *ante*, p. 183 (h). We command you that of the goods and chattels of C. D., in your bailiwick, you cause to be made the sum of £ , which lately before us in our high Court of Chancery, [or, "in our Court of Exchequer at Westminster,"] in a certain cause, or certain causes [*as the case may be*], wherein A. B., is Plaintiff, and C. D., is Defendant, or in a certain matter there depending, intituled "In the matter of ,"*as the case may be*], by a decree

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(f) See *ante*, sec. 20, p. 27.

(g) See the first of the general orders in Chancery, note (n) *ante*, p. 25.

(h) By the *third* general order of the Courts of Chancery and Exchequer in Equity of the 10th May, 1839, it is ordered "that such writs, when sealed, shall be delivered to the sheriff or other officer, to whom the execution of the like writs issuing out of the superior Courts of Common Law belongs, and shall be executed by such sheriff or other officer, as nearly as may be in the same manner in which he doth, or ought to

or order (i) [*as the case may be*], of our said court, bearing date the      day of      , was decreed or ordered [*as the case may be*], to be paid by the said C. D. to A. B.; and that of the goods and chattels of the said C. D. in your bailiwick, you further cause to be made interest upon the said sum of £      , at the rate of four pounds *per centum per annum* from the      day of      , [the day on which the decree or order was made, or, if that were prior to the 1st October, 1838, say, "from the 1st day of October, 1838,"] (j) and that you have that money \* and interest before us, in our said court, immediately after the execution hereof, to be paid to the said A. B., in pursuance of the said decree or order (*as the case may be*): and that you do all such things as by the statute passed in the second year of our reign you are authorized and required to do in this behalf (k); and in what manner you shall have executed this our Writ, make appear to us in our said Court immediately after the execution thereof(l); and have there then this Writ. Witness ourself [or, if in the Exch. "James Lord Abinger,"] at Westminster, the      day

execute such like writs; and such writs when returned by such sheriff or other officer, shall be delivered to the Clerks in Court, by whom respectively they were sued out, or be left at their respective seats, and shall thereupon be filed as of record in the office of the Six Clerks of this Court; and that for the execution of such writs, such sheriff or other officer shall not take, or be allowed any fees, other than such as are, or shall be from time to time, allowed by lawful authority for the execution of the like writs issuing out of the Superior Courts of Common Law." Omitting the words in italics, this order applies to the Court of Exchequer in Equity, but with those words, to the Courts of Chancery. See the fourth order, note (l) post.

(i) See sec. 18, *antè*, p. 24.

(j) See sec. 17, *antè*, p. 24.

(k) See sec. 12, *antè*, p. 18, and notes.

(l) By the fourth of the general orders of 10th May, 1839, which applies to the Courts of Chancery, and the Court of Exchequer in Equity, it is ordered "that if it shall appear

of , [the day on which the writ issues] in the year of our reign (m).

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## No. 2.

*Writ of Fieri Facias, on a decree or order of the Court of Chancery, [or, Exchequer in Equity,] for payment of money and interest.*

VICTORIA, &c., [commence as form, No. 1, *antè*, p. 183.] We command you + that of the goods and chattels of C. D., in your bailiwick, you cause to be made the sum of £ , and also interest

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upon the return of any such writ of fieri facias as aforesaid, that the sheriff or other officer, hath by virtue of such writ seized, but not sold any goods of the person ordered to pay such sum of money or costs as aforesaid, the person to whom such sum of money or costs is payable, shall, immediately after such writ with such return shall be filed as of record, be at liberty, by his Clerk in Court, to sue out a writ of *venditioni exponas* in the form hereinafter stated, or as near thereto as the circumstances of the case may require.” (See form of writ of venditioni exponas, No. 10, *post*, p. 218; and see note (A) *antè*, p. 207.)

(m) It is ordered by the *fifth* of the same general orders, “that on every such writ of fieri facias and elegit so to be issued as aforesaid, there shall be endorsed the words ‘By the Court,’ and also thereunder the calling and place of residence of the party against whom such writ shall be issued, and also the name and residence, or place of business of the Solicitor at whose instance the same shall be issued, and the name of the Clerk in Court issuing the same, and that every such Writ be also endorsed for the sum to be levied, *costs of writ, sheriff's poundage, &c.*, according to the form used upon like writs issuing out of the superior Courts of Common Law.” This order, omitting the words in italics, is in the form issued by the Courts of Chancery, but with those words it applies to the Court of Exchequer in Equity.

By the *sixth* of the same general orders, which applies to the Courts of Chancery and the Exchequer in Equity, it is ordered, “that for every such writ of *fieri facias* or *venditioni exponas*, so to be issued as aforesaid, there shall be allowed to the Clerk in Court issuing the same, the sum of eighteen shillings and seven-pence, and for every such writ of *elegit*

thereon, at the rate of four pounds *per centum per annum* from the      day of     , [the day mentioned in the order for payment of the money, &c.,] which said sum of money and interest were lately before us in our High Court of Chancery [or, "in our Court of Exchequer at Westminster,"] in a certain cause, or certain causes [*as the case may be*], wherein A. B. is plaintiff, and C. D. is defendant, or in a certain matter there depending, intituled "in the matter of     ," [*as the case may be*], by a decree or order [*as the case may be*], of our said Court, bearing date the      day of     , decreed or ordered [*as the case may be*], to be paid + by the said C. D. to A. B., and that you have that money, &c., [*conclude as form, No. 1, ante, p. 208, from \* to the end.*]

## No. 3.

*Writ of Fieri Facias, on a decree or order of the Court of Chancery, [or, Exchequer in Equity,] for payment of money and costs.*

VICTORIA, &c., [*commence as form, No. 1, ante, p. 183.*] We command you, that of the goods and chattels of C. D., in your bailiwick, you cause to be made the sum of £     , which said sum of money was lately before us in our High Court of Chancery, [or, "in our Court of Exchequer at Westminster,"] in a + certain cause, or certain causes [*as the case may be*], wherein A. B. is plaintiff, and C. D. is defen-

the sum of one pound ten shillings, and that there shall be allowed to the Solicitor at whose instance any such writ of *fieri facias, elegit, or venditioni exponas*, shall be issued, the sum of six shillings and eight-pence for instructions for the said writ, and that there be also allowed to such Solicitor the further sum of six shillings and eight-pence, for attending to procure a warrant, and for attending to instruct the officer charged with the execution of such writ."

dant, or in a certain matter there depending, intituled, "in the matter of \_\_\_\_\_, [as the case may be], by a decree or order [as the case may be], of our said Court bearing date the \_\_\_\_\_ day of \_\_\_\_\_, decreed or ordered [as the case may be], to be paid † by the said C. D. to A. B., together with certain costs in the said order mentioned, and which costs have been taxed and allowed by \_\_\_\_\_, Esquire, one of the masters of our said court, at the sum of £ \_\_\_\_\_, as appears by the certificate of the said master, dated the \_\_\_\_\_ day of \_\_\_\_\_, and that of the goods and chattels of the said C. D. in your bailiwick, you further cause to be made the said sum of £ \_\_\_\_\_, [the amount of the costs], together with interest at the rate of four pounds *per centum per annum* on the said sum of £ \_\_\_\_\_, [the amount of the money ordered] from the \_\_\_\_\_ day of \_\_\_\_\_, [the date of the order, or, if that were prior to the 1st October, 1838, say, "from the 1st day of October, 1838,"] and on the said sum of £ \_\_\_\_\_, [the amount of the costs], from the \_\_\_\_\_ day of \_\_\_\_\_, [the date of the master's certificate, or, if that were prior to the 1st October, 1838, say, "from the 1st day of October, 1838,"] and that you have that money, &c., [conclude as form, No. 1, ante, p. 208, from \* to the end.]

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## No. 4.

*Writ of Fieri Facias, on a decree or order of the Court of Chancery, [or, Exchequer in Equity,] for payment of money, interest, and costs.*

VICTORIA, &c., [commence as form, No. 1, ante, p. 183.] We command you, &c., [as in form, No. 2, ante, p. 209, from † to †] by the said C. D. to A. B., together with certain costs in the said order mentioned, and which costs have been taxed and allowed by \_\_\_\_\_, Esquire, one of the masters of our said court, at the sum of £ \_\_\_\_\_, as appears by the

certificate of the said master, dated the      day of      , and that of the goods and chattels of the said C. D. in your bailiwick, you further cause to be made the said sum of £      , together with interest thereon at the rate aforesaid, from the day of      , [*the date of the master's certificate of taxation, or, if that were prior to the 1st October, 1838, say, "from the 1st day of October, 1838,"*] and that you have that money, &c., [*conclude as form, No. 1, ante, p. 208, from \* to the end.*]

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## No. 5.

*Writ of Fieri Facias, on a decree or order of the Court of Chancery, [or, Exchequer in Equity,] for payment of costs.*

VICTORIA, &c., [*commence as in form, No. 1, ante, p. 183.*] We command you, that of the goods and chattels of C. D. in your bailiwick, you cause to be made the sum of £      , for certain costs which were lately before us in our High Court of Chancery, [*or, "in our Court of Exchequer at Westminster,"*] in a, &c., [*as in form, No. 3, ante, p. 210, from † to ‡*] by the said C. D. to A. B., and which costs have been taxed and allowed by      , Esquire, one of the masters of our said court, at the said sum of £      , as appears by the certificate of the said master, dated the      day of      , and that of the goods and chattels of the said C. D. in your bailiwick you further cause to be made interest on the said sum of £      , at the rate of four pounds *per centum per annum* from the      day of      , [*the date of the master's certificate, or, if that were prior to the 1st October, 1838, say, "from the 1st day of October, 1838,"*] and that you have that money, &c., [*conclude as form, No. 1, ante, p. 208, from \* to the end.*]

## No. 6.

*Writ of Elegit, on a decree or order of the Court of Chancery, [or, Exchequer in Equity,] for payment of money, or money and interest.*

VICTORIA, &c., [commence as form, No. 1, ante, p. 183.] (n) Whereas, lately in our High Court of Chancery, [or, "in our Court of Exchequer at Westminster,"] in a certain cause or certain causes [as the case may be] there depending, wherein A. B. and others are Plaintiffs, and C. D. and others are Defendants, or in a certain matter there depending, intituled, "in the matter of " [as the case may be] by a decree or order [as the case may be] of our said Court, made in the said cause or matter [as the case may be], and bearing date the day of , it was decreed and ordered, or ordered [as the case may be] that \* the said C. D. should pay unto A. B. † the sum of £ , [if interest be given by the order say "together with interest thereon after the rate of four pounds per centum per annum from the day of ,"] (o). And afterwards † the said A. B. came into our said Court of Chancery [or, "Exchequer,"] and according to the form of the statute in such case made and provided, chose to be delivered to him, [her, or them, as the case may be,] all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough; and also all (p) such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick, as the said C. D. or any one in trust for him, was seized or possessed of † on the day of , in the year of our Lord 184 , [the day on which the decree or order was made] or at any time afterwards, or over which the said C. D. on the

(n) See note (h) ante, p. 207.

(o) See sec. 17, ante, p. 24.

(p) See ante, p. 17.

said      day of      , [*the day on which the decree or order was made*] or at any time afterwards had any disposing power, § which he might without the assent of any other person exercise for his own benefit, to hold to him the said goods and chattels as his proper goods and chattels, and to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns || until the said sum of £      , together with interest thereon at the rate of four pounds *per centum per annum* § from the said      day of      , [*if the order be for money and interest, the day mentioned in the order; if for money only, the day on which the decree or order was made, or in case it was made prior to the 1st day of October, 1838, say, "from the 1st day of October, 1838,"*] (q) shall have been levied. Therefore ¶ we command you that without delay you cause to be delivered to the said A. B. by a reasonable price and extent all the goods and chattels of the said C. D. in your bailiwick, except his oxen and beasts of the plough; and also all such lands, tenements, rectories, tithes, rents and hereditaments, including lands and hereditaments of copyhold or customary tenure (r) in your bailiwick, as the said C. D., or any person in trust for him, was seized or possessed of ¶ on the said      day of      , [*if the order be for money and interest, the day mentioned in the order; if for money only, the day on which the decree or order was made, or in case it was made prior to the 1st day of October, 1838, say, "from the 1st day of October, 1838,"*] or at any time afterwards, or over which the said C. D. on the said      day of      , [*if the order be for money and interest, the day mentioned in the order; if for money only, the day on which the decree or order was made, or in case it was made prior to the 1st day of October, 1838, say, "from the 1st day of October, 1838,"*]

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(g) See sec. 17, *antè*, p. 24.

(r) See sec. 11, *antè*, p. 17.

October, 1838,"] or at any time afterwards, had any disposing power,\*\* which he might without the assent of any other person exercise for his own benefit, to hold the said goods and chattels to the said A. B. as his proper goods and chattels, and also to hold the said lands, tenements, rectories, tithes, rents and hereditaments respectively, according to the nature and tenure thereof (*s*), to him and to his assigns, †† until the said sum of £ , together with interest as aforesaid, shall have been levied. And in what manner †† you shall have executed this our writ make appear to us in our Court of Chancery [or, "Exchequer"] aforesaid immediately after the execution thereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement, and have there then this writ. Witness, &c., [conclude as form, No. 1, ante, p. 208.]

## No. 7.

*Writ of Elegit, on a decree or order of the Court of Chancery, [or, Exchequer in Equity,] for payment of costs.*

VICTORIA, &c., [commence as form, No. 6, ante, p. 213, to the †] certain costs as in the said decree or order [as the case may be] mentioned, and which costs have been taxed and allowed by , Esquire, one of the masters of our said court, at the sum of £ , as appears by the certificate of the said master, dated the day of . And afterwards, &c., [as in form, No. 6, ante, p. 213, from † to †] on the day of , in the year of our Lord 184 , [the date of the master's certificate of taxation] or at any time afterwards, or over which the said C. D. on the said day of , [the date of the master's certificate of taxation] or at any time afterwards, had any disposing power, &c., [as in form, No. 6, ante, p. 214, from § to §,] from the said

(s) See ante, sec. 11, p. 17.

day of , [the date of the master's certificate of taxation, or if that were prior to the 1st day of October, 1838, say, "from the 1st day of October, 1838,"] shall have been levied. Therefore &c., [as in form, No. 6, antè, p. 214, from ¶ to ¶,] on the said day of , [the date of the master's certificate of taxation] or at any time afterwards, or over which the said C. D. on the said day of , [the date of the master's certificate of taxation] or at any time afterwards, had any disposing power, &c., [conclude as form, No. 6, antè, p. 215, from \* \* to the end.]

---

## No. 8.

*Writ of Elegit, on a decree or order of the Court of Chancery, [or, Exchequer in Equity,] for payment of money and costs.*

VICTORIA, &c., [commence as form, No. 6, antè, p. 213, to \*] C. D. should pay unto A. B. the sum of £ , together with certain costs, as in the said decree or order [as the case may be] mentioned, and which costs have been taxed and allowed by , Esquire, one of the masters of our said court, at the sum of £ , as appears by the certificate of the said master, dated the day of . And afterwards, &c., [as in form, No. 6, antè, p. 213, from ¶ to ¶], on the day of , in the year of our Lord, 184 , [the day on which the decree or order was made] or at any time afterwards, or over which the said C. D., on the said day of , [the day on which the decree or order was made, or in case it was made prior to the 1st of October, 1838, say, "from the 1st day of October, 1838,"] or at any time afterwards, had any disposing power, &c., [as in form, No. 6, antè, p. 214, from § to ||], until the said two several sums of £ and £ , together with interest upon the said sum of £ , at the rate of four pounds per centum per annum

from the      day of      , [*the day on which the decree or order was made, or in case it was made prior to the 1st of October, 1838, say, "from the 1st day of October, 1838,"*] and on the said sum of £      , at the rate aforesaid, from the day of      , [*the date of the master's certificate of taxation, or if that were prior to the 1st day of October, 1838, say, "from the 1st day of October, 1838,"*] shall have been levied. Therefore, &c., [*as in form, No. 6, ante, p. 214, from ¶ to ¶,*] on the      day of      , in the year of our Lord 184      , [*the day on which the decree or order was made,*] or at any time afterwards, or over which the said C. D. on the said      day of      , [*the day on which the decree or order was made, or in case it was made prior to the 1st of October, 1838, say, "from the 1st day of October, 1838,"*] or at any time afterwards, had any disposing power, &c., [*as in form, No. 6, ante, p. 215, from \*\* to ††,*] until the said two several sums of £      and £      , together with interest aforesaid, shall have been levied. And in what manner, &c., [*conclude as form, No. 6, ante, p. 215, from †† to the end.*]

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## No. 9.

*Writ of Elegit, on a decree or order of the Court of Chancery, [or, Exchequer in Equity,] for payment of money, interest, and costs.*

VICTORIA, &c., [*commence as form, No. 6, ante, p. 213 to \*,*] C. D. should pay unto A. B. the sum of £      , together with interest thereon, after the rate of four pounds *per centum per annum* from the day of      , together also with certain costs, as in the said decree or order [*as the case may be*] mentioned, and which costs have been taxed and allowed by      , Esquire, one of the masters of our said court, at the sum of £      , as appears by the certificate of the said master, dated the

day of . And afterwards, &c., [as in form, No. 6, ante, p. 213, from ¶ to ||,] until the said two several sums of £ and £ , together with interest upon the said sum of £ , at the rate of four pounds *per centum per annum* from the said day of , [*the day mentioned in the decree or order,*] and on the said sum of £ , at the rate aforesaid, from the day of , [*the date of the master's certificate of taxation, or if that were prior to the 1st of October, 1838, say, "from the 1st day of October, 1838,"*] shall have been levied. Therefore, &c., [as in form, No. 6, ante, p. 214, from ¶ to ¶,] on the said day of , [*the date on which the decree or order was made,*] or at any time afterwards, or over which the said C. D., on the said day of , [*the day on which the decree or order was made,*] or at any time afterwards, had any disposing power, &c., [as in form, No. 6, ante, p. , from \*\* to ††] until the said two several sums of £ and £ , together with interest as aforesaid, shall have been levied. And in what manner, &c., [conclude as form, No. 6, ante, p. 215, from †† to the end.]

## No. 10.

*Writ of Venditioni Exponas, issuing out of the Court of Chancery, [or, Exchequer in Equity]* (t).

VICTORIA, &c., [commence as form, No. 1, ante, p. 183.] Whereas by our writ we lately commanded you, that of the goods and chattels of C. D. [*here recite the previous writ of fieri facias to the end,*] and on the day of , [*day of the return by the sheriff or other officer to the fieri facias,*] you returned to us in our Court of Chancery [or, "Exchequer"] aforesaid, that by virtue of the said

(t) See the fourth order in Chancery, ante, p. 208, note (l), and also the sixth order, ante, p. 209, note (m).

o you directed, you had taken goods and chattels the said C. D. to the value of the money and st aforesaid, which said goods and chattels ned in your hands unsold for want of buyers. fore we being desirous that the said A. B. d be satisfied his money and interest aforesaid, hand you, that you expose to sale, and sell, or to be sold, the goods and chattels of the said by you in form aforesaid taken, and every thereof, for the best price that can be gotten e same, and have the money arising from such before us in our said Court of Chancery [*or, chequer*"] aforesaid, immediately after the exen hereof, to be paid to the said A. B. And there then this writ. Witness, &c., [*conclude rm, No. 1, ante, p. 208.*] ]

## TABLE OF FEES

IN

## The Insolvent Debtors Court. (u)

## ATTORNEYS' FEES.

	£ s. d.
Attendances in prison and taking instructions for petition, and attendances for copy of causes . . . . .	0 6 8
Notice to gaoler and service . . . . .	0 2 0
Drawing and engrossing petition, including parchment . . . . .	0 3 0
Duplicate ditto in country cases . . . . .	0 2 0
Preparing and attesting estate paper in duplicate . . . . .	0 2 0
Ditto, if second page written, additional	0 1 0
Obtaining office copy of præcipe (not including fee paid) . . . . .	0 3 4
Attending to lodge or file petition, with accompanying documents . . . . .	0 3 4
Notice for appraisement of excepted articles, and attendances . . . . .	0 3 4
Attendances in prison and taking instructions for schedule . . . . .	0 6 8
Drawing schedule, per folio of 72 words When the number of debtors exceeds twenty, then for the excess above twenty, per folio, only 4d. viz. two words to be computed as one.	0 0 8
Engrossing schedule, . . . . . per folio	0 0 4
Duplicate, in country cases, . . . . . per folio	0 0 4

(u) See sec. 34, *ante*, p. 39.

	£ s. d.
y for prisoner, if required, per folio	0 0 4
ment of schedule, with printed half-sheet . . . . .	0 2 0
of schedule, with printed form	0 0 8
balance sheet, common case	0 5 0
sheet additional . . . . .	0 2 6
licate in country cases . . . . .	0 2 6
nd engrossing petition and affi- r leave to file petition or sche- ne having expired, on printed common case . . . . .	0 4 0
another half-sheet is necessary lebtor and creditor account, ad- ances relating to such applica- tions . . . . .	0 1 6
	0 6 8
B. Where the Court directs o creditors, subsequent charges further allowed.	
at prison, reading over and at- schedule . . . . .	0 6 8
to file schedule, and for order- ing . . . . .	0 3 4
insolvent for his books, &c., in- the same, and lodging the the office, or with the clerk of ce . . . . .	0 3 4
nent in newspaper, or Dublin or gh Gazette, including all pay- a respect of the same, and for per or Gazette, and atten- . . . . .	0 10 6
ore than one such advertisement l, for the second . . . . .	0 8 0
order to serve or annex, and ex- . . . . . each	0 0 4
messengers to deliver order, co- service, and lists; and for their	

	£ s. d.
return (and their affidavits in country cases) . . . . .	0 3 4
For all lists delivered to messengers, in each town case . . . . .	0 1 6
Ditto, in each country case . . . . .	0 1 0
Ditto, in respect of each notice specified in such lists, additional . . . . .	0 0 1
Filing affidavits of service with advertisements . . . . .	0 3 4
In country cases to be charged for all conveyances of documents and books, with expenses and attendances, besides as above mentioned . . . . .	0 7 6
<i>N.B.</i> If by reason of the small number of cases at any place on circuit or sessions, either alone or with other cause, the above allowance shall appear not to remunerate an attorney for the parcels connected with the petitions heard at such place, the taxing officer may make further allowance, according to such circumstance.	
Searching with the gaoler for new detainees . . . . .	0 2 6
Searching for notice of opposition in town cases . . . . .	0 2 6
Attending Court on days of hearing . . . . .	0 6 8
Drawing and engrossing affidavits of service of rules . . . per folio	0 0 4
Ditto, other affidavits than above mentioned, per folio . . . . .	0 0 8
Taking instructions for special affidavits . . . . .	0 3 4
Taking instructions for brief for prisoner . . . . .	0 3 4
Instructing counsel on motion . . . . .	0 3 4
Drawing brief for prisoner, per sheet of ten folios . . . . .	0 5 0
Fair copy ditto, per sheet of ten folios . . . . .	0 2 6
Attending counsel, court on motion, and other necessary attendances not otherwise mentioned . . . . .	0 3 4

	£	s.	d.
d service of rules within the dis-			
of the twopenny post . . . . .	0	3	0
and sending letters when abso-			
necessary . . . . .	0	2	6
advertisements, other than above			
printed . . . . .	0	2	6
y ditto for printer . . . . .	0	1	0
costs with copies and getting			
taxed, with affidavit and all			
ses and attendances thereon (but			
cluding the officer's fee) in each			
case . . . . .	0	5	0
further taxation after hearing .	0	1	6
messengers, stationery, &c., not			
wise charged, in each town case	0	2	0
each country case (v) . . . . .	0	3	0

## OFFICERS' FEES.

g petition of creditor, and evi-			
in support thereof . . . . .	0	3	0
ch, and certificate to be annexed			
ditor's petition of no prior peti-			
iled from date of custody,—for			
year's indexes during the period	0	1	0
office copies of vesting order, to-			
: with order in duplicate to file			
ule, to be served on prisoner			
creditor petitions . . . . .	0	3	6
carrying vesting order, and prepar-			
otice thereof, and sending same			
zette, pursuant to 1 & 2 Vict.,			
, sec. 37, which requires notice			
published . . . . .	0	5	0

Ordered, That no account shall be kept as heretofore  
attorneys for the carriage of country schedules, &c.,  
place of hearing ; but that there shall be paid there-  
ch case on filing the schedule, 6d., and that if, after  
the carriage and portage, any surplus shall remain  
of the year, the chief clerk shall place the same to  
of the public account.

	f s. d.
N.B. The sum of 3s. for the publisher of Gazette is also payable ( <i>w</i> ).	
For preparing the warrant of attorney . . . . .	0 2 6
For preparing advertisement of hearing, and sending same to Gazette . . . . .	0 1 0
N.B. The sum of 3s. for the publisher of Gazette is also payable ( <i>x</i> ).	
For notice of sureties to enter into recognizance, with order, instructions, &c. . . . .	0 2 0
For filing and registering recognizance . . . . .	0 2 6
For appointment of assignee or new assignee, and entering same of record, and advertizing same in Gazette, pursuant to 1 & 2 Vict. c. 110, sec. 45 ( <i>y</i> ), which requires notice to be published. . . . .	0 7 6
N.B. This is payable on filing acceptance of appointment, together with 3s. for the publisher of Gazette ( <i>z</i> ).	
For certificate of the sum in court in any case, or of no sum in court . . . . .	0 0 6
N.B. Copies of the entire account in any case may be required, and will be charged as other office copies.	
For certificate of copies made in pursuance of 7 Geo. 4, c. 57, sec. 78, or of 1 & 2 Vict. c. 110, sec. 105 ( <i>a</i> ) . . . . .	0 2 6
For a search or a certificate, other than as above, in answer to inquiry ( <i>b</i> ) . . . . .	0 1 0
For office copies of proceedings—each folio ( <i>c</i> ) . . . . .	0 0 4

(*w*) See sec. 115, *ante*, p. 129, which is repealed by the 2 & 3 Vict. c. 39, sec. 1, *ante*, p. 146.

(*x*) *Ibid.*

(*y*) See *ante*, p. 54.

(*z*) See note (*w*), *supra*.

(*a*) See *ante*, p. 119.

(*b*) If before adjudication, the prisoner's attorney, or a creditor or his attorney, may search without fee.

(*c*) When an office copy is made, to which a printed form is applicable, printed words will not be computed by folio; but paper and print will be charged as two folios, 8*d.*, whether

£ s. d.

For copy of record made on parchment, and certified according to the 7 Geo. 4, c. 57, sec. 19, or 2 Will. 4, c. 44, sec. 2, or 1 & 2 Vict. c. 110, sec. 46 and 65 (d) . . . . .	0 10 0
For investigating matters in pursuance of any order of reference made by the Court or a commissioner, and report- ing thereon, for each meeting, (such meeting to last two hours, if required)	1 0 0
For ditto, when documents only are re- ferred, and reporting . . . . .	0 15 0
<i>N.B.</i> This is the total, whatever time and labour is required.	
For every order of the Court and for every summons (e) . . . . .	0 1 0
For filing assignee's account, and giving instruction for proceeding to dividend, registering, &c. . . . .	0 3 0
<i>N.B.</i> No further fee is payable by assignees for the clerk's duties in mat- ters of audit, dividend, &c., unless on taxation of law bills.	
For every subpoena . . . . .	0 1 0
For taxing attorney's bill for proceedings of insolvent pursuant to rule of Court	0 2 6
Ditto on further taxation after hearing	0 1 0
For all other taxation of costs each side	0 1 0

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To the broker for valuing, appraising and  
certifying the excepted articles of a  
prisoner (with further certificates as  
required by the prescribed form) upon

the copy be of a schedule or of any other proceeding. Also  
when a series of documents in any case is required, not more  
than 8*d.*, as above, will be charged for the whole.

(d) See *ante*, pp. 55 and 73.

(e) Those are excepted which relate to the proceedings of  
a prisoner prior to and including order of adjudication and  
warrant, no fee being payable on such orders. Also orders  
which are drawn of course upon certificate.

the amount of such valuation, in £ s. d.  
the pound . . . . . 0 1 0

*N.B.* 4s. on account of this fee, and no more, may be received at the time of giving the notice for appraisement; and where the fees shall prove to be less, the difference shall be returned when the appraisement is delivered.— Provided that no such repayment shall be claimed, unless the brokers have been permitted duly to complete their valuations.

To ditto on the delivery of each notice for appraisement . . . . . 0 1 0

*N.B.* No further payment will be allowed to be received on account of coach hire, for places in or within ten miles of London.

To the messengers for every personal service of order for hearing made by them in London and within ten miles thereof	0 0 10
To ditto for drawing, engrossing, and swearing affidavit of each such service made by them . . . . .	0 0 2
To ditto for every other personal service, including affidavit . . . . .	0 1 6
To ditto for every service by general post, and drawing, engrossing, and swearing affidavit of the same . . . . .	0 0 3
To ditto for every consent taken by them in Court, including the affidavit . . . . .	0 1 0
To ditto for every consent taken by them elsewhere than in Court (or in Court, if there has been attendance for the same elsewhere) including the affidavit	0 2 6
Fee to commissioners appointed by the Court for taking affidavits (excepting those who are likewise officers of the Court, and who do the same without fee) for each affidavit . . . . .	0 1 0

*It is Ordered,* that where judgment shall £ s. d.  
be entered up on the warrant of attorney in the Court of Queen's Bench,  
there shall be charged against the estate in full of all charges, costs, and expenses attending the same, the sum of 1 15 0

*N.B.* This has recently been increased by reason of the increase of fees payable in the Court of Queen's Bench.

It is provided by the 45th section of 1 & 2 Vict. c. 110, that it shall be lawful for the Court to direct any fee or remuneration for the performance of duties in getting in and distributing the estate of any insolvent debtor, whether by any assignee, or by the provisional assignee in case of such distribution being effected without the appointment of any other assignee, which shall not exceed the rate of five *per centum* on the sum received as produce of such estate (*f*).

This power will be used or not used, as may appear fit in any case.

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(*f*) See *ante*, p. 55.



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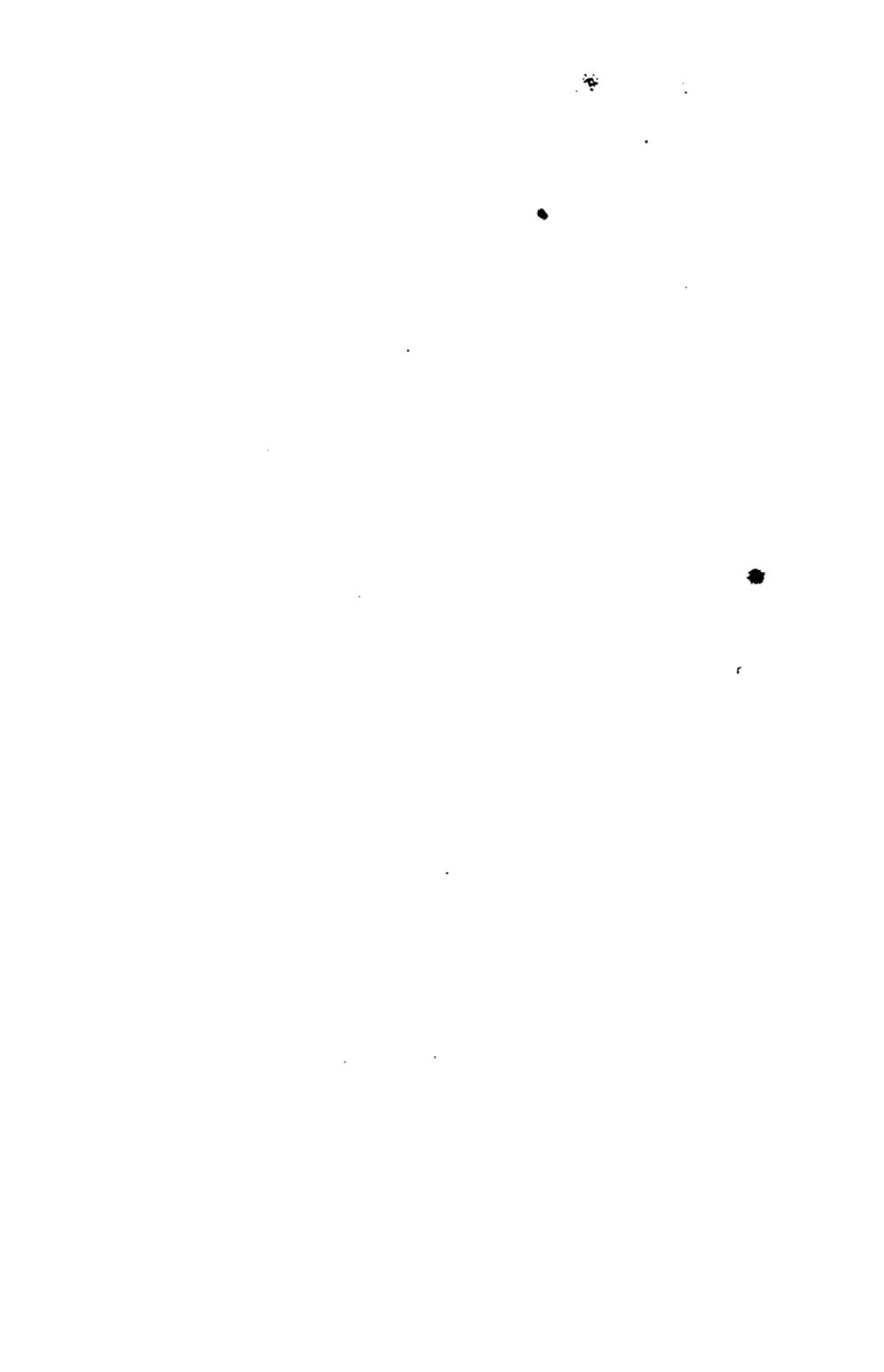
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